A DIGEST

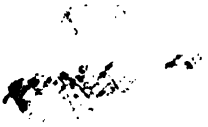
OF

THE LAW

RELATING TO

BILLS OF EXCHANGE,

&c.



A DIGEST

OF

THE LAW

RELATING TO

BILLS OF EXCHANGE,

Promissory Notes,

AND

BANKERS' CHECKS,

WITH

AN APPENDIX,

CONTAINING

THE STATUTES AND FORMS.

BY HENRY ROSCOE, ESQ.

OF THE INNER TEMPLE, BARRISTER AT LAW.

LONDON:

SAUNDERS AND BENNING, LAW BOOKSELLERS,

(SUCCESSORS TO J. BUTTERWORTH AND SON,)

43, FLEET STREET.

1829.

LONDON:
Printed by Littlewood and Co.
Old Bailey.

CONTENTS.

CHAPTER I.

PAGE

Of bills and notes in general 1

CHAP. II.

Of the various parts of bills and notes, including stamps and alterations 21

CHAP. III.

Of the parties to bills and notes 41

CHAP. IV.

Of the liabilities of parties to bills and notes 72

CHAP. V.

Of the consideration of bills and notes 103

CHAP. VI.

Of the transfer of bills and notes..... 125

CHAP. VII.

PAGE
Of the presentment of bills and notes 140

CHAP. VIII.

Of the acceptance of bills 170

CHAP IX.

Of notice of dishonor 194

CHAP X.

Of the payment of bills and notes 238

CHAP. XI.

Of the remedy on bills and notes 252

CHAP. XII.

Of the evidence 274

CHAP. XIII.

Of the sum recoverable 306

CHAP. XIV.

Of bankruptcy 317

CHAP. XV.

Of lost and stolen bills and notes 353

CHAP. XVI.

PAGE
Of the forgery of bills and notes..... 371

NOTES 381

APPENDIX.

OF STATUTES..... 401
OF FORMS 433

INDEX 447

ERRATA.

Page 30, *line* 24, after 3 D. & R. insert " 190."
—— 33, *line* 17 from the bottom, after " promissory," insert " note."
—— 217, wrongly numbered 227.
—— 227, *line* 14 from the bottom, for " 552," read " 652."

The statute relating to Coal Notes, 3 *G.* 2. *c.* 26. *s.* 7. (page 10) is repealed by stat. 47 *Geo.* 3. *c.* 68. 128.

A

TABLE OF CASES

CITED.

Abel v. Sutton, 67.
Abraham v. Dubois, 30.
Acheson v. Fountain, 136.
Adams v. Gregg, 87, 88, 89.
Agace Ex parte, 61.
Aikin Ex parte, 349, 350.
Alderson v. Pope, 199.
Allan v. Mawson, 19. 276.
Allen v. Dundas, 239.
Allen v. Reeves, 32.
Alves v. Hodgson, 30. 33. 256. 383.
Ambe v. Miles, 119.
Ambrose v. Hopwood, 148. 181. 269.
Amory v. Merryweather, 116. 133.
Ancher v. Bank of England, 137, 138.
Anderson v. Cleveland, 85. 104.
Anderson v. George, 102.
Anderson v. Heath, 177.
Anderson v. Hick, 175. 187.
Anderton v. Beck, 153.
Andrews v. Franklin, 14, 15.
Anonymous, 22. 25. 44. 73. 95. 128. 177. 268. 275, 276. 292. 298. 302. 321. 342.
Anson v. Bailey, 216.
Antoine v. Morshead, 48. 384.
Appleby v. Biddulph, 17.
Appleton v. Sweetapple, 145. 156.
Arbouin v. Tritton, 345.
Archangelo v. Thompson, 291.
Archer v. Bamford, 106, 107

Arden v. Sharpe, 61. 66.
Arden v. Watkins, 128.
Arnold v. Revoult, 58. 257.
Arundel Bank v. Goble, 77.
Ashford v. Hand, 253.
Atkins Ex parte, 326.
Atkins v. Tredgold, 299.
Atkins v. Wheeler, 311.
Atkinson v. Elliott, 344.
Attorney General v. Valabregue, 261.
Attwood v. Griffin, 23. 40. 263. 276.
Attwood v. Munnings, 47. 171.
Attwood v. Rattenbury, 137. 284.
Atwood v. Crowdie, 109.
Aubert v. Maze, 117.
Auriol v. Thomas, 311. 313. 315.
Ayer v. Hutchins, 387.
Ayrey v. Davenport, 82.

B.

Bacon v. Searles, 308. 398.
Badnall v. Samuel, 74.
Baker v. Birch, 197. 255.
Baker v. Charlton, 65, 66. 68.
Balbi v. Batley, 260.
Baldwin Ex parte, 339.
Baldwin v. Richardson, 235.
Ballantine v. Golding, 92.
Ballingalls v. Gloster, 2. 95.
Banbury v. Lisset, 186.
Bancroft v. Hall, 161. 205. 207. 212.
Bank of England v. Newman, 99.
Banks v. Cowell, 134.
Barber Ex parte, 321.
Barber v. Backhouse, 61. 104. 106.
Barber v. Gingell, 44. 282. 300.
Barbour v. Newall, 395.
Barclay Ex parte, 197. 325.
Barclay v. Bailey, 161.
Barclay v. Walmsley, 117.
Barfoot v. Goodall, 69.
Barker v. Gordon, 145.
Barlow v. Bishop, 58. 130. 264.
Barlow v. Broadhurst, 12.
Barnes v. Hedley, 120.
Barnwell v. Mitchell, 397.
Baroness, In re, 331.

Barough v. White, 297.
Barratt, Ex parte, 341.
Barrington, in the matter of, 42. 324.
Baskerville v. Cooper, 262.
Bass v. Clive, 83. 266. 280.
Bateman v. Joseph, 145. 147. 234, 235.
Bathe v. Taylor, 37.
Battie v. Taylor, 34.
Bayley v. Ballard, 129.
Beardsley v. Baldwin, 13, 14.
Beauchamp v. Cash, 196.
Beaufoy, Ex parte, 322.
Beck v. Robley, 34. 135. 238.
Beckwith v. Corrall, 366.
Bedford v. Deakin, 79. 88.
Beeching v. ———, 158.
Beeching v. Gower, 152.
Beeley v. Wingfield, 113.
Bell, Ex parte, 318. 324.
Bell v. Wardell, 145.
Bellasis v. Hester, 153, 154.
Bennett v. Dawson, 260.
Bennett v. Farnell, 24.
Benson v. White, 270.
Benson v. Marshall, 297.
Bent v. Puller, 349.
Bentley v. Northouse, 4. 254.
Bentinck v. Dorrien, 188.
Bernasconi v. Duke of Argyle, 285.
Bevan v. Hill, 241. 354.
Beveridge v. Burgis, 234.
Bickerdike v. Bollman, 104. 195. 224. 228. 320, 321.
Biggs v. Stewart, 273.
Bignold v. Waterhouse, 199.
Bilbie v. Lumley, 220.
Bingley v. Maddison, 321.
Bire v. Moreau, 30.
Birt v. Kershaw, 303.
Bishop v. Chambre, 33. 36. 256.
Bishop v. Chitty, 183.
Bishop v. Hayward, 43.
Bishop v. Rowe, 204.
Bishop v. Young, 3. 27. 252. 382.
Bize v. Dickason, 220.
Black v. Peele, 85.
Blackburne, Ex parte, 99. 324.
Blackham v. Doren, 226.
Blakely v. Grant, 394.
Blanckenhagen v. Blundell, 12. 17.

Blaney v. Henricks, 309, 310.
Bleasby v. Crossley, 319.
Blesard v. Hirst, 219.
Bloxham, Ex parte, 331. 337, 338.
Boehm v. Campbell, 29, 270. 276.
Boehm v. Garcias, 187. 189.
Boehm v. Stirling, 9. 135.
Bolitho, Ex parte, 60.
Bolland v. Bygrave, 109.
Bolland v. Nash, 347.
Bolton v. Pullen, 127.
Bolton v. Richard, 96. 99.
Bonbonus, Ex parte, 60.
Bona v. Stockdale, 27.
Bontien's case, 376.
Boot v. Franklin, 389.
Booth v. Grove, 266.
Borough v. White, 134.
Borrodaile v. Lowe, 221.
Bosanquet v. Anderson, 281. 283. 285, 286. 288.
Bosanquet v. Dudman, 109, 134.
Bottomley v. Wilson, 301.
Boughton v. Frere, 265.
Boulager v. Talleyrand, 215.
Bowerbank v. Monteiro, 187. 278.
Bowes v. Howe, 167.
Bowman v. Nichol, 37. 39.
Bowyer v. Brampton, 115. 122, 123.
Boyle, Ex parte, 345.
Bradshaw v. Saddington, 260.
Braham v. Bubb, 16.
Bray v. Hadwen, 198. 209, 210.
Branbram v. Wharton, 299.
Brard v. Ackerman, 300.
Brett v. Levett, 217. 319.
Brett v. Tomlinson, 113.
Brickwood v. Anniss, 77.
Bright v. Purrier, 73.
Brind v. Bacon, 301.
Brisbane v. Dacres, 220.
Britten v. Webb, 43.
Brix v. Braham, 49. 108.
Bromley v. Frazier, 199.
Brooke v. Middleton, 120.
Brooks v. Clarke, 260.
Brooks v. Rogers, 326. 328.
Brough v. Parkings, 212. 215.
Broughton v. the Manchester Water Works, 50. 116.
Brown, Ex parte, 128. 341.

Brown v. Davis, 133.
Brown v. Harradan, 3. 163.
Brown and Co. v. Hutchison, 395.
Brown v. Kewley, 99.
Brown v. Leonard, 68.
Brown v. Maffey, 224. 228, 229.
Brown v. M'Dermot, 148. 168.
Brown v. Messiter, 355.
Brown v. Saul, 10.
Brown v. Turner, 116. 133.
Brown v. Watts, 256, 257.
Browning v. Kinnear, 235.
Bruce v. Bruce, 100. 245, 246, 247.
Bruce v. Hurly, 128.
Brutt v. Picard, 25. 40.
Bryant v. Christie, 108.
Bryden v. Bryden, 394.
Brymer, Ex parte, 325, 326.
Buchanan, Ex parte, 351.
Buckland v. Tankard, 302, 303.
Buckler v. Buttivant, 331.
Buckley v. Campbell, 165. 264.
Bulkley v. Butler, 277.
Buller v. Cripps, 2, 3.
Bullpin v. Clarke, 59.
Bulmer, Ex parte, 115, 116. 322.
Bunbury v. Lissett, 16.
Burchell v. Slocock, 16.
Burbridge v. Manners, 132. 207. 248, 249.
Burgess, in the matter of, 319.
Burleigh v. Scott, 299.
Burn, Ex parte, 340, 341.
Burnyvat v. Hutchinson, 115.
Burrows v. Jemino, 92.
Burton Bank, Ex parte the, 351.
Butler v. Malessey, 265.
Butterworth v. Lord Despencer, 270.
Butts v. Swan, 28. 31, 32.
Buzzard v. Flecknoe, 134.
Bynner v. Russell, 270. 276.
Byrne v. Godfrey, 85.

C.

Calaghan v. Aylett, 181. 183.
Callow v. Lawrence, 28. 34. 135. 238.
Calvert v. Roberts, 36.
Cameron v. Smith, 309. 319.

Camidge v. Allenby, 8. 101. 154. 158.
Campbell v. French, 154.
Capp v. Lancaster, 298.
Cardwell v. Martin, 37.
Carlos v. Fancourt, 3. 15. 16.
Carmalt v. Haggarty, 106.
Carr v. Shaw, 4.
Carroll v. Blencow, 58.
Carstairs v. Bates, 348.
Carstairs v. Rolleston, 77. 90. 110.
Carstairs v. Stein, 120.
Carter's case, 378.
Carter v. Dowrisk, 262.
Carter v. Palmer, 253.
Cartwright v. Williams, 109. 301.
Carwick v. Vickery, 71. 126.
Casborne v. Dutton, 17.
Castleman v. Ray, 32.
Catherwood v. Chabaud, 55.
Catt v. Howard, 280.
Chadwick v. Allen, 17.
Chalfield v. Paxton, 220.
Chalmers v. Lanion, 133.
Champion v. Terry, 102. 354.
Chamberlyn v. Delarive, 154.
Chapman v. Black, 121.
Charles v. Marsdon, 112. 133. 386.
Charrington v. Milner, 302.
Chaters v. Bell, 137. 213, 214. 268.
Chaworth v. Beech, 136.
Cheek v. Roper, 146. 148.
Chesner v Noyes, 292.
Childers v. Boulnois, 18.
Childs v. Monins, 55.
Churchill v. Gardner, 267.
Christie v. Fonsick, 298.
Claridge v. Dalton, 102. 222. 226.
Clarke Ex parte, 95. 324.
Clarke v. Adair, 92.
Clarke v. Blackstock, 18. 40. 71.
Clarke v. Cawthorne, 261.
Clarke v. Cock, 174.
Clarke v. Devlin, 74. 76. 83. 381.
Clarke v. Martin, 3. 253.
Clarke v. Noel, 82.
Clarke v. Pigot, 137.
Clavey v. Dolbin, 173. 179.
Clayton's case, 248.
Clayton v. Gosling, 27. 323.

Clayton v. Jennings, 123.
Claxton v. Swift, 259.
Clegg v. Cotton, 222.
Clegg v. Levy, 383.
Cocks v. Borrodaile, 286.
Cockshott v. Bennett, 107.
Cole v. Blake, 249.
Cole v. Gower, 114.
Colehan v. Cooke, 13. 15. 26.
Coleman v. Sayer, 154. 164.
Coles v. Trecothick, 45.
Colkett v. Freeman, 319.
Collenridge v. Farquharson, 134.
Collico's Case, 373.
Collings v. Treweek, 275.
Collins v. Butler, 147.
Collins v. Martin, 111. 127.
Collis v. Emet, 24. 46.
Collott v. Haigh, 81. 89.
Colombies v. Slim, 258.
Comerford v. Price, 42.
Connor v. Martin, 58.
Conroy v. Warren, 389.
Coogan's Case, 373.
Coolidge v. Payson, 390.
Coombs v. Ingram, 27. 108.
Cooper v. Davies, 249. 302.
Cooper v. Machin, 320.
Cooper v. Pepys, 336.
Coore v. Callaway, 171. 240.
Copp v. M'Dugall, 395.
Cornforth v. Revetts, 258.
Corney v. Da Costa, 232.
Cory v. Scott, 222, 232. 271.
Cotes v. Davies, 58. 130.
Cotton v. Horsemander, 310.
Cotton v. James, 291.
Cousins v. Thompson, 9, 10.
Cowan v. Abrahams, 275.
Cowie v. Halsall, 38.
Cowie v. Harris, 25.
Cowley v. Dunlop, 254.
Cox v. Troy, 192.
Coxen v. Lyon, 263. 276. 326. 330.
Critchlow v. Parry, 268. 293.
Cromwell v. Hynson, 148. 199. 213.
Crosby v. Crouch, 129.
Cross v. Smith, 196. 199. 205.
Crossley, Ex parte, 337.

Crossly v. Ham, 132.
Crutchley v. Clarance, 23. 46. 131.
Crutchley v. Mann, 23. 29. 46.
Cuff v. Brown, 105.
Cuming v. French, 217.
Cutts v. Perkins, 381.
Cuxon v. Chadley, 94.

D.

Dacosta v. Cole, 212. 249.
Dagnall v. Wigley, 118.
Dandrige v. Corden, 297.
Dangerfield v. Wilby, 256. 354.
Daniel v. Cartony, 121.
Darbishire v. Parker, 145. 206. 208.
Darnell v. Williams, 104.
Da Silva v. Fuller, 241.
Davies v. Hardacre, 119.
Davis v. Dodd, 354.
Davison, Ex parte, 12. 255. 323.
Davison v. March, 260.
Davison v. Robertson, 2. 65.
Dawes v. Deloraine, 16.
Day v. Nix, 106.
De Berdt v. Atkinson, 229, 230, 231.
Deey, Ex parte, 73. 325.
De Bergareche v. Pillin, 149. 269.
De Bernales v. Fuller, 93.
Dehers v. Harriott, 20. 133. 164. 212.
De la Courtier v. Bellamy, 25.
De la Torre v. Barclay, 76. 196.
Delauney v. Mitchell, 109. 124.
Dennis v. Morris, 196. 217.
Dent v. Dunn, 239. 310.
Denton v. Rodie, 60.
De Tastet Ex parte, 337.
De Tastet v. Baring, 312. 314. 398.
Dewdney Ex parte, 322. 325.
Dickinson v. Bowes, 265.
Dickson Ex parte, 96. 343.
Dickson v. Evans, 346.
Dillon v. Rimmer, 88.
Dimsdale v. Lancaster, 254.
Dingwell v. Dunster, 85. 381.
Dinkinson v. Prentice, 300.
Dod v. Edwards, 84. 111.
Dolman v. Orchard, 67.

Doman v. Dibdin, 310.
Douthat, Ex parte, 320.
Downe's case, 379.
Down v. Halling, 9. 26. 135. 365.
Downman, Ex parte, 323.
Downes v. Richardson, 36, 37.
Drage v. Netter, 84.
Drake v. Elwyn, 397.
Drayton v. Dale, 48. 56. 257. 368.
Du Belloix v. Lord Waterpark, 309.
Duff v. East India Company, 239.
Duhammel v. Pickering, 48.
Dumas, Ex parte, 350.
Duncan v. Scott, 116, 117. 295.
Dunlop v. Hamilton, 388.
Dunn v. O'Keefe, 73.
Dunn v. Slee, 89.
Durenbury v. Ellis, 384.
Dyer, Ex parte, 174. 323.
Dwight v. Scovil, 393.

E.

Earle, Ex parte, 333. 335.
Easterby v. Pullen, 299.
East India Company v. Chitty, 156.
East India Company v. Hensley, 45
East India Company v. Tritton, 240, 293.
East London Water Works Company v. Bailey, 55.
Eaton v. Bell, 48.
Edie v. East India Company, 55. 126. 137, 138.
Edis v. Bury, 20.
Edmonds v. Lowe, 305. 397.
Edsall's case, 378.
Edwards v. Dick, 115. 123.
Egan v. Threlfall, 362.
Elford v. Teed, 160.
Elgar, Ex parte, 323.
Elliot's case, 25.
Elliot v. Cowper, 22.
Ellis v. Galindo, 85.
Ellison v. Dezell, 80.
Ellyott v. Cooper, 4.
Elstone v Mortlake, 260.
Elworth's case, 378.
Emly v. Lye, 59, 60.
English v. Darley, 74, 75, 76. 102.
Erskine v. Murray, 22. 262. 266, 267.

Esdaile v. Sowerby, 166. 230. 233.
Evans v. Cramlington, 24. 126. 239.
Evans v. Drummond, 88.
Evans v. Lewis, 265.
Evans v. Underwood, 15.
Evans v. Weaver, 262.
Everett v. Collins, 98.
Exon v. Russell, 26. 151. 255.

F.

Facey v. Hurdom, 145.
Fairlee v. Herring, 173. 188.
Fairley v. Roch, 251.
Farquhar v. Southey, 39. 84. 87.
Fayle v. Bird, 26. 149.
Feise v. Randall, 107.
Fenn v. Harrison, 42, 43. 45. 99. 136.
Fenton v. Goundry, 148. 183.
Fentum v. Pocock, 83. 90. 111. 381.
Ferguson & Co. v. Belsh, 394.
Fernandez v. Glynn, 139. 181. 193.
Ferris v. Bond, 17.
Fidgeon v. Sharpe, 129.
Firbank v. Bell, 31.
Firth v. Thrush, 235. 271.
Fisher v. Leslie, 18.
Fisher v. Pomfret, 137.
Fleming v. Simpson, 106.
Fletcher v. Braddyl, 290.
Fletcher v. Froggart, 219.
Fletcher v. Sandys, 156.
Foden v. Sharpe, 398.
Folliott v. Ogden, 383.
Forman v. Jacob, 265. 267.
Foster v. Clements, 242.
Foster v. Jardison, 196.
Forsyth's case, 69.
Fox v. Hanbury, 70.
Francis's case, 376.
Francis v. Mott, 358.
Francis v. Nash, 10. 12.
Francis v. Rutcher, 314. 342.
Frederick v. Cotton, 263. 276.
Free v. Hawkins, 232. 278.
Freeman v. Hoskins, 387.
Freeman v. Kennell, 282.
Fry v. Hill, 144, 145.

Fryer v. Brown, 275.
Fuller v. Smith, 100. 274.
Fydell v. Clarke, 99.

G.

Gale v. Walsh, 213.
Gamba v. Le Mesurier, 384.
Gammon v. Schmoll, 181. 187.
Gantt v. Mackensie, 312. 316.
Gardom, Ex parte, 42.
Gardner v. Baillie, 46.
Garnett v. Woodcock, 160.
Garrett v. Jule, 88.
Gascoyne v. Smith, 106. 134.
Geary v. Phisic, 136.
Geill v. Jeremy, 210.
Geddes, Ex parte, 321.
Gibbins v. Phillips, 129.
Gibbon v. Coggon, 214. 236. 271.
Gibbon v. Featherstonhaugh, 294.
Gibbon v. Scott, 278.
Gibbs v. Merrill, 56.
Gibson and Johnson, In the matter of, 336.
Gibson v. Hunter, 24.
Gibson v. Minet, 1, 2. 94, 95. 104. 135. 253.
Gifford, Ex parte, 89. 325.
Gilchrist's case, 378.
Giles v. Bourne, 25. 262. 269.
Giles v. Perkins, 348, 352.
Gill v. Cubitt, 359. 364.
Gladstone v. Hadwen, 128.
Glaister v. Hewer, 321. 325.
Glasscot v. Day, 249.
Glover, Ex parte, 343.
Glover v. Thompson, 355.
Godfrey v. Macauley, 68.
Goggerley v. Cuthbert, 133.
Goldsmith v. Bland, 162. 196. 204.
Goldsmith v. Shee, 162.
Goldsmith v. Tail, 273.
Gomezserra v. Berkley, 238,
Goodall v. Dolly, 141. 195. 219. 228.
Goodburne v. Marley, 123.
Gooderich v. Goodwin, 390.
Goodies v. Lake, 275.
Gordon v. Austin, 265.
Gorgier v. Mieville, 126, 127.

Gorham v. Thompson, 69.
Goss v. Nelson, 15.
Gould v. Robson, 78, 82. 87. 249.
Goulding, Ex parte, 62.
Goupy v. Harden, 47. 138.
Grant v. Austin, 92.
Grant v. Da Costa, 27.
Grant v. Hawkes, 66.
Grant v. Vaughan, 23. 126. 254. 357.
Grant v. Welshman, 105.
Gray v. Milner, 19. 22. 141. 171. 276.
Gray v. Palmers, 279.
Gregory v. Frazier, 33.
Green v. Davies, 17. 22. 28. 29. 32.
Green v. Deakin, 61.
Green v. Herne, 273.
Greening, Ex parte, 128.
Greenslade v. Dower, 70.
Greenway, Ex parte, 324. 356.
Greenway v. Carrington, 262.
Greenway v. Hindley, 236.
Greenwood, Ex parte, 330.
Grey v. Cowper, 56. 130.
Grimshaw v. Bender, 398.
Grigley v. Oats, 10.
Grosvenor, Ex parte, 343.
Guichard v. Roberts, 103, 112.
Guidon v. Robson, 257.
Gunson v. Metz, 218.
Guy v. Harris, 18.

H.

Haddock v. Bury, 168. 216.
Hague v. French, 25. 154.
Hale, Ex parte, 326. 347.
Halcombe v. Lambkin, 259.
Hall, Ex parte, 128.
Hall v. Fuller, 244.
Hall v. Smith, 18. 59.
Halliday v. Ward, 299.
Haly v. Lane, 59. 111.
Hammersley v. Knowlys, 249.
Hammet v. Yea, 119.
Hamerton v. Mackarell, 3.
Hammond v. Dufresne, 223.
Hamson v. Harrison, 318.
Handerson v. Benson, 122.
Hankey v. Jones, 42. 318.

Hankey v. Smith, 345.
Hankey v. Trotman, 145. 156.
Hankey v. Wilson, 286.
Hanson, Ex parte, 120.
Hansard v. Robinson, 250. 354. 356.
Harding v. Cooper, 113.
Hardwick v. Blanchard, 301.
Hardy v. Woodroffe, 26. 147. 151. 270.
Harford, Ex parte, 351.
Harley v. Case, 248.
Harley v. Greenwood, 343.
Harman v. Lasbrey, 397.
Harrington v. Du Chatel, 114.
Harris v. Huntbach, 253.
Harris v. Manley, 261.
Harrison, at suit of, 44.
Harrison, Ex parte, 42. 324.
Harrison v. Dickson, 311.
Harrison v. Hannel, 121.
Harrison v. Jackson, 59.
Hart's Case, 378.
Hart v. Newman, 86.
Hart v. Taylor, 262.
Hartley v. Case, 196. 207.
Hartley v. Wilkinson, 14. 278.
Hartshorn v. Slodden, 129.
Harvey v. Martin, 179. 390.
Haughton v. Ewbank, 44. 279.
Haussollier v. Hartsinck, 17.
Hawkeswood's Case, 374.
Hawkes v. Salter, 206. 210.
Hawkes v. Saunders, 108.
Hawkey v. Borwick, 269.
Hawkins v. Cardee, 139.
Hawkins v. Rutt, 206. 370.
Hay v. Goldsmid, 46.
Haydoch v. Lynch, 15.
Hayling v. Mulhall, 102.
Haynes v. Birks, 210.
Hayward v. Bank of England, 146.
Haywood v. Chambers, 49. 114.
Head v. Sewell, 184.
Heath, Ex parte, 104. 222. 325.
Hebden v. Hartsink, 96.
Helmsley v. Loader, 266. 281.
Heming v. Brook, 10.
Hemings v. Robinson, 287.
Henderson v. Benson, 123.
Hendricks v. Judah, 387.
Henry v. Lee, 160.

Hetherington v. Kemp, 289.
Hevey's Case, 376.
Hewet v. Goodrich, 74. 82.
Heylin v. Adamson, 2. 3. 95. 199.
Heys v. Heseltine, 266.
Heywood v. Watson, 109.
Higginbottom, In the matter of, 342.
Highmore v. Primrose, 27. 255.
Hildyard v. Smith, 272.
Hilton v. Fairclough, 206.
Hilton v. Shepherd, 145. 233.
Hill v. Halford, 13. 15.
Hill v. Heap, 167. 168.
Hill v. Lewis, 2. 8. 95. 126. 145.
Hill v. Read, 89.
Hoare v. Cazenove, 191.
Hoare v. Da Costa, 156.
Hoare v. Graham, 278.
Hodenpyl v. Vingerhoed, 279.
Hodge v. Fillis, 26. 168. 184.
Hodges v. Stewart, 95.
Hodson v. Green, 272.
Hoffman, Ex parte, 342. 398.
Hogg v. Snaith, 46.
Holbrow v. Wilkins, 203.
Holden, Ex parte, 81. 377.
Holding, Ex parte, 320. 328.
Holliday v. Atkinson, 11. 57. 111. 257.
Holman v. Johnson, 383.
Holme v. Barry, 155.
Holme v. Green, 299.
Holmes v. Kerrison, 298.
Holroyd v. Whitehead, 258.
Holt v. Squire, 281.
Hone v. Rawlinson, 126.
Hopes v. Alder, 145. 216.
Hopley v. Dufresne, 168. 219.
Hopper v. Richmond, 310.
Horford v. Wilson, 216.
Hornblower v. Proud, 347, 348.
Horton v. Coggs, 126.
Hough's Case, 379.
Houlditch v. Nias, 63.
Houle v. Baxter, 326.
Houriet v. Morris, 4. 48. 263.
How v. Hall, 275.
Howard v. Baillie, 44. 46.
Howe v. Bowes, 152. 166.
Howis v. Wiggins, 326. 328.
Hubbard v. Jackson, 135.

Hubner v. Richardson, 121.
Huddock v. Murray, 394.
Huffam v. Ellis, 182. 269.
Hughes v. Kiddell, 388.
Hull v. Pitfield, 239. 258.
Humbert v. Ruding, 124.
Hume v. Peploe, 84.
Humphrey v. Moxen, 300.
Humphries v. Williams, 260.
Humphries v. Winslow, 260.
Hunter's Case, 19. 276.
Hussey v. Freeman, 394.
Hussey v. Jacob, 122.
Hustler, Ex parte, 42, 99. 324.
Hutchinson v. Piper, 119.

I.

Ingledew v. Douglas, 57.
Inglis v. Grant, 318.
Ilderton v. Atkinson, 302.
Imeson, Ex parte, 12. 332.
Ingram v. Foster, 146.
Irving v. Foster, 179.
Isbester, Ex parte, 137. 324.
Israel v. Israel, 18.

J.

Jackson v. Fairbank, 299.
Jackson v. Hudson, 22. 171. 189.
Jackson v. Lomas, 107.
Jackson v. Pigott, 172, 268.
Jackson v. Warwick, 105.
Jackson v. Yate, 259, 260.
Jacobs v. Hart, 37.
James v. Catherwood, 30.
James v. Holditch, 158.
Jameson v. Swinton, 198. 212.
J'Anson v. Thomas, 31. 164.
Jarold v. Rowe, 311.
Jay v. Warren, 75.
Jeffreys v. Walter, 123.
Jenkins v. Blizzard, 69.
Jenny v. Herle, 15.
Jeune v. Ward, 56. 180.
Johnson v. Collings, 141. 172. 174.

Johnson v. Duke of Marlborough, 36.
Johnson v. Garnett, 36.
Johnson v. Gibb, 36.
Johnson v. Kennion, 139. 306, 307, 308. 398.
Johnson v. Mason, 279.
Johnson v. Ogilby, 112.
Johnson v. Ward, 279.
Jones v. Brooke, 301. 303.
Jones, Ex parte, 120.
Jones v. Darch, 56.
Jones v. Davison, 118.
Jones v. Hibbert, 104.
Jones v. Lewis, 261.
Jones v. Morgan, 267. 281.
Jones v. Mars, 264. 266.
Jones v. Radford, 283.
Jones v. Ryde, 43. 100. 245.
Jones v. Simpson, 31.
Jordaine v. Lushbrooke, 29.
Josceline v. Laserre, 15, 20.
Joseph v. Orme, 326.
Jowett Charnock, 265.
Julian v. Shobrooke, 173. 186.

K.

Kay v. Brookman, 294.
Kearney v. King, 264. 276.
Kearslake v. Morgan, 96.
Keates v. Wheldon, 28.
Kellock v. Robinson, 82.
Kennedy v. Nash, 36. 310.
Kent v. Lowen, 110. 120. 291.
Kennison v. Cooke, 90.
Kershaw v. Cox, 27. 39.
Kessebower v. Timms, 253.
Key v. Flint, 344.
Kidson v. Dilworth, 47.
Kilgour v. Finlyson, 59. 67.
Kilsby v. Williams, 93.
Kine v. Beaumont, 291.
King, Ex parte, 337, 338.
King v. Milson, 123. 359.
King v. Thom, 55.
Kingston v. Long, 13.
Knight v. Criddle, 10. 12.
Knill v. Williams, 27. 34. 38, 39.
Kufh v. Weston, 205.

L.

Lacy v. Woolcot, 49. 66. 68. 70. 127.
Laing v. Barclay, 312. 316.
Laing v. Stone, 309.
Lambert, Ex parte, 192. 251. 327.
Lambert v. Oakes, 135.
Lanauze v. Palmer, 291.
Lane v. Cotton, 369.
Langdale v. Trimmer, 209, 210.
Langdon v. Hulls, 291.
Langston v. Corney, 187.
Lawson v. Lawson, 11.
Lawson v. Morgan, 63.
Lawson v. Sherwood, 208. 291.
Lawson v. Weston, 359. 363, 364.
Lowe v. Waller, 115.
Laxton v. Peat, 89. 381.
Layfield, at suit of, 66.
Leach v. Buchanan, 84. 229. 282.
Leach v. Hewitt, 196.
Leadbitter v. Farrow, 47.
Lean v. Schutz, 58.
Leaper v. Tatton, 255. 299.
Ledger v. Ewer, 105. 107.
Lee, Ex parte, 319. 321. 374.
Lee v. Levy, 75.
Lee v. Newsam, 365.
Lee v. Zagury, 133.
Leeds v. Lancashire, 12, 13. 278.
Leeds Bank, Ex parte the, 350.
Leers, Ex parte, 336.
Leeson v. Pigott, 270. 288.
Lefebre, Ex parte, 336.
Le Fevre v. Lloyd, 47.
Leftly v. Mills, 153. 164, 165. 213. 215. 248.
Legge v. Thorp, 214. 222. 224. 271. 304.
Lenox v. Leverett, 394.
Le Sage v. Johnson, 264.
Lester v. Garland, 154.
Levi v. Essex, 304.
Levy v. Wilson, 266.
Lewis v. Cosgrave, 105. 107.
Lewis v. Jones, 81. 107.
Lewis v. Ord, 15.
Lewis v. Owen, 92.
Lindo v. Unsworth, 211.
Lisson v. Tomlinson, 229.

Little v. Slackford, 18.
Livingstove v. Hastie, 385.
Lloyd v. Ashby, 63.
Lloyd, Ex parte, 329.
Lloyd v. Williams, 118.
Lockett's Case, 375.
Lobbon, Ex parte, 363.
Long v. Ballie, 241, 355.
Long v. Colburn, 383.
Long v. Moore, 256.
Longchamp v. Kenny, 10.
Loomis v. Pulver, 387.
Lord Galway v. Matthew, 18. 59. 67.
Losee v. Dunkin, 387.
Lovell's Case, 378.
Lovell v. Martin, 241.
Low v. Copestake, 284.
Lowe v. Waller, 121.
Lowes v. Mazzaredo, 115. 121.
Lowndes v. Anderson, 360.
Lowndes v. Collins, 310.
Lowther v. Conyers, 272.
Lundie v. Robertson, 168. 217. 270, 271.
Lumley v. Palmer, 173.
Lynall v. Longbothom, 123.
Lyon v. Sundius, 182.

M.

Macarty v. Barrow, 73.
Macbeath v. Haldimand, 47.
Macdonald v. Bovington, 76. 259.
Machell v. Kinnear, 285.
Machu v. Fraser, 259, 260.
Macferson v. Thoytes, 283.
M'Gae, Ex parte, 348.
Mackintosh v. Haydon, 37, 38. 148, 149.
Mackleod v. Snee, 16.
M'Nair v. Fleming, 65.
M'Neilage v. Holloway, 58. 321.
Maddock v. Hammett, 119.
Maddocks v. Hankey, 287.
Mainwaring v. Newman, 44.
Mainwaring v. Rytton, 304.
Mallet v. Thompson, 77. 99.
Mann v. Lent, 124.
Mann v. Moors, 206.
Manners, Ex parte, 323.

Manwaring v. Harrison, 145. 155.
March v. Ward, 18. 71.
Margesson v. Goble, 197.
Marlar, Ex parte, 309. 342.
Marsh v. Houlditch, 249.
Marsh v. Martindale, 118.
Marsh v. Maxwell, 210.
Marsh v. Newell, 126. 258.
Marsh v. Pedder, 98.
Marshall, Ex parte, 328.
Marshall v. Griffin, 273.
Marshall v. Rutton, 58.
Marson v. Petit, 38, 39.
Martin v. Chauntry, 12.
Martin v. Morgan, 32.
Mason's case, 378.
Mason v. Barff, 180.
Mason v. Franklin, 389.
Mason v. Hunt, 85.
Mason v. Rumsey, 59.
Master v. Kirton, 63.
Master v. Miller, 34. 188.
Masterman v. Cowrie, 117. 120.
Mather, Ex parte, 322.
Matthew, Ex parte, 115. 328.
Matthews v. Griffiths, 119.
Maundrell v. Kennett, 303.
Maunsell v. Massarene, 273.
May v. Cooper, 153.
May v. Smith, 69.
Mayor v. Johnson, 354.
Mead v. Braham, 326. 329. 343.
Mead v. Young, 23. 126. 241. 277. 376.
Meagoe v. Simmons, 118.
Meggadon v. Holt, 165. 195.
Melford v. Meyer, 73.
Mellish v. Simeon, 73. 313, 314.
Memot v. Bates, 277.
Mendez v. Carreroon, 250.
Mercer v. Jones, 311.
Mercer v. Southwell, 269.
Merchants' Bank v. Birch, 393.
Mertens v. Winnington, 251.
Merton's case, 374.
Metcalfe, Ex parte, 334.
Middleton v. Gill, 310.
Middleton v. Sandford, 265. 277.
Millard's case, 379.
Miller v Miller, 10, 11.

Miller v. Race, 10. 101. 357, 358.
Mills, Ex parte, 256.
Mills v. Lyne, 273.
Milne v. Graham, 4.
Milne v. Prest, 172. 187.
Milnes v. Duncan, 247. 254.
Minet v. Gibson, 24.
Minnitt v. Whitney, 66.
Mitchell v. Degrand, 389. 392.
Moffat's case, 373.
Moggridge v. Jones, 106.
Moline, Ex parte, 199. 230, 231. 248.
Moody v. King, 301.
Moor v. Vanlute, 12.
Moor v. Withy, 177.
Moore, Ex parte, 314. 342.
Moore v. Warren, 155.
Moore v. Wright, 346.
More v. Manning, 136.
Mores v. Bird, 383.
Morgan v. Davison, 161.
Morgan v. Richardson, 106.
Morice v. Lee, 17. 111.
Morris v. Norfolk, 272.
Morris v. Wall, 9.
Moss v. Smith, 321.
Mossop v. Eadon, 354, 355, 356.
Mountstephen v. Brooke, 265, 266.
Mowbray, Ex parte, 128. 340.
Moxen v. Pullen, 135.
Muilman v. D'Eguino, 142, 143. 145. 206.
Mumford, Ex parte, 114.
Munn v. Baker, 68.
Murray v. East India Co. 55, 56. 298. 310.
Murray v. King, 202.
Mutford v. Walcot, 132. 172. 186. 189.

N.

Nadin v. Battie, 76.
Napier v. Schneider, 83. 273. 315.
Nash v. Brown, 110.
Neale v. Erving, 44. 279.
Neale v. Turton, 44.
Newby v. Smith, 116.
Newsome v. Coles, 63. 67, 68.
Nicholls v. Dowding, 280.

Nicholson v. Gouthit, 197. 229. 230. 232.
Nicholson v. Sedgwick, 126.
Nightingale v. Withington, 384.
Norris v. Aylett, 88.
Norton v. Pickering, 228.
Noyes v. Price, 10.

O.

Ogilby, Ex parte, 329.
O'Keefe v. Dunn, 122. 131. 133. 141. 195.
Oldfield's case, 378.
Ord v. Portal, 137. 257. 284.
Orr v. Churchill, 310.
Orr v. Maginnis, 141. 195. 214. 222. 223.
Osborne v. Noad, 278.
Ouchterlony v. Easterby, 346.
Outhwaite v. Luntley, 35. 38. 395.
Owen v. Barrow, 239.
Owenson v. Morse, 9. 95. 97.

P.

Page, Ex parte, 320.
Paget de Bras v. Forbes, 110.
Palliser v. Ord, 45.
Palmer's case, 377.
Palmer v. Pratt, 14.
Parker v. Gordon, 160. 370.
Parker v. Leigh, 87.
Parkins v. Hawkshair, 277.
Parr's case, 379.
Parr, Ex parte, 43. 334.
Parr v. Eliason, 119. 121. 349.
Pasmore v. North, 25. 131.
Paterson v. Hardacre, 123.
Paterson v. Zachariah, 69. 257.
Patterson v. Beecher, 237.
Patience v. Townley, 169. 270.
Paton v. Winter, 35. 188.
Peach v. Burgess, 196.
Peach v. Kay, 178.
Peacock's Case, 376.
Peacock v. Murrell, 30.
Peacock v. Rhodes, 137. 358.
Pearse v. Pemberthy, 200. 271.

Pearson v. Crallan, 207. 312.
Pearson v. Garrett, 13.
Pease Ex parte, 349. 350.
Peele Ex parte, 60.
Perham v. Raynal, 299.
Perring v. Dunston, 50.
Petit v. Wilson, 188.
Pfiel v. Vanbatanberg, 250. 294.
Phillips v. Astling, 147. 202.
Philliskirk v. Plinkwell, 103. 257.
Philpot v. Briant, 77. 147. 381.
Phipson v. Kneller, 196. 236.
Pike v. Street, 138. 143. 278.
Pickard v. Banks, 9, 10.
Pierson v. Dunlop, 16. 174. 187. 309.
Pierson v. Hutchinson, 241. 353.
Pilkington v. Green, 113.
Pillam v. Foster, 299.
Pillans v. Van Mierop, 171. 173, 174. 177.
Pinkerton v. Adams, 48.
Pinkney v. Hall, 59. 61.
Plumer's Case, 291.
Pocklington v. Silvester, 157.
Pocock v. Billing, 296.
Poland v. Glyn, 129.
Pollard v. Herries, 4. 73. 313.
Poole v. Bousfield, 300.
Poole v. Cabanes, 9.
Poole v. Smith, 354.
Popplewell v. Wilson, 27. 108.
Porter v. Palsgrave, 310.
Pratt v. Willey, 119.
Preston v. Jackson, 120.
Price v. Dardell, 196.
Price v. Mitchell, 26. 150. 152.
Price v. Neale, 242. 245.
Price v. Shute, 188.
Prickard v. Cowlam, 261.
Priddy v. Henbrey, 27. 95. 104. 253. 382.
Prideaux v. Collier, 167. 304.
Pring v. Clarkson, 78. 87.
Pruessing v. Ing, 30.
Porthouse v. Parker, 199.
Potter v. Brown, 92.
Potter v. Rayworth, 218.
Powell's case, 378.
Powell v. Monnier, 173, 174, 175. 178.
Powell v. Roach, 248.

Pownal v. Ferrand, 253. 381.
Puckford v. Maxwell, 96.
Putnam v. Sullivan, 384.

Q.

Quarterman v. Green, 8.
Quin v. Keefe, 92.

R.

Raggett v. Axmore, 89.
Ralli v. Sarell, 187.
Ramsbottom v. Cator, 48. 127.
Ramsbottom v. Lewis, 127.
Raper v. Birkbeck, 192.
Rathbone, Ex parte, 324.
Rawlinson v. Stone, 55. 130.
Rawson v. Walker, 278.
Read, Ex parte, 335.
Reader, Ex parte, 339.
Reading's case, 378.
Redshaw v. Jackson, 255.
Reed v. Deere, 33.
Reed v. White, 88.
Rees v. Abbott, 265.
Rees v. Marquis of Headfort, 295.
Rees v. Warwick, 176.
Reeves's Case, 378.
Reid v. Ellis, 261.
R. v. Bathwick, 33.
—— Bigg, 136.
—— Birkett, 374.
—— Box, 3. 374.
—— Burke, 373.
—— Chipping Norton, 29.
—— Dunn, 376.
—— Elsworth, 374.
—— Goldstein, 261.
—— Hawkswood, 33.
—— Inhabitants of Chipping Norton, 55.
—— Jones, 373.
—— Lambton, 136.
—— Morris, 378.
—— Parkes and Brown, 376.
—— Pateman, 373.
—— Pendleton, 33.

R. v. Post, 12, 374.
—— Randall, 22, 23. 373.
—— Richards, 22. 373.
—— Ridge, 119.
—— Sheriff of London, 272.
—— Treble, 38. 375.
—— Wilcox, 12. 374. 378.
Reynolds v. Davies, 268.
Reynolds v. Chettle, 123. 149.
Rhode v. Proctor, 199. 231.
Rhodes v. Gent. 91. 256.
Rice v. Stearns, 387.
Rich v. Topping, 119. 300.
Richards v. Barton, 171.
Richards v. Lord Milsington, 150.
Richardson v. Allan, 301.
Richardson v. Bradshaw, 42. 318.
Richmond v. Heapy, 321.
Richford v. Ridge, 157. 199.
Ridley v. Taylor, 59. 62. 65. 130.
Roach v. Ostler, 20. 43. 277.
Roberts Ex parte, 42. 99. 324.
Roberts v. Bradshaw, 289, 290.
Roberts v. Eden, 127. 134.
Roberts v. Peake, 13. 265.
Robertson v. Kensington, 83. 138.
Robins v. Gibson, 212. 224.
Robinson v. Eland, 115. 311.
Robinson v. Yarrow, 280. 283.
Robson v. Bennett, 145. 149. 156, 157. 181.
Roche v. Campbell, 4. 26. 152.
Roderick v. Hovil, 29.
Roffey, Ex parte, 325.
Rogers, Ex parte, 325.
Rogers v. Kingston, 114.
Rogers v. Stephens, 212. 216. 222. 237.
Rolfe v. Caslon, 110. 330. 400.
Rolt v. Watson, 102. 354.
Roosevelt v. Woodhull, 396.
Rooth v. Jauney, 280.
Rooth v. Quin, 67.
Rordasnz v. Leach, 257. 284.
Roscow v. Hardy, 132. 195.
Rose v. Leicester, 107.
Rose v. Rowcroft, 25. 321.
Rosher v. Kieran, 198.
Rouse v. Redwood, 218.
Rowe v. Young, 38. 91. 148. 184. 186. 188. 391, 392.

Rowley v. Horne, 69.
Rowning v. Goodchild, 369.
Rowton, Ex parte, 351.
Royal Bank of Scotland, Ex parte, 336.
Rucker v. Hiller, 222. 225.
Rudder v. Price, 253.
Ruff v. Webb, 18. 33.
Rufford, Ex parte, 340. 341.
Rumball v. Ball, 269. 298.
Rushfirth, Ex parte, 340.
Rushton v. Aspinall, 269. 271.
Russell v. Hankey, 9. 248.
Russell v. Langstaffe, 17. 46. 131. 166. 201. 229.
Ryan v. Mackmath, 63.
Ryswick, Ex parte, 336.

S.

Sadler, Ex parte, 107.
Salomons v. Stavely, 271.
Sanderson v. Jackson, 22.
Sands v. Graham, 259.
Sanford v. Mickles, 387.
Sangster v. Mazzaredo, 280.
Sarrat v. Austin, 320. 331.
Sarsfield v. Witherley, 42.
Saunderson v. Bowes, 26. 152.
Saunderson v. Judge, 148. 150. 183. 205,
Savage v. Aldien, 136. 297.
Sayer v. Kitchen, 281.
Schofield v. Day, 398.
Scholey v. Ramsbottom, 241.
Scholey v. Walsby, 250. 293.
Scott v. Lifford, 84. 112. 206. 210, 211.
Scott v. Gilmore, 115.
Seatance v. Poole, 57.
Sebag v. Abitbol, 91. 187.
Seddon, Ex parte, 326.
Seddons v. Stratford, 117.
Segourney v. Lloyd, 138.
Selby v. Eden, 26. 149.
Serjeant, Ex parte, 349.
Sewell v. Stubbs, 301.
Shaw v. Broom, 296.
Shaw v. Croft, 198.
Shaw v. Markham, 291.
Shepherd v. Green, 262.
Sheppard's Case, 375.

Shepperd v. Hawky, 393.
Sherrington v. Jermyn, 36.
Shirreff v. Wilks, 62. 64.
Shukard's Case, 377.
Shute v. Robins, 145.
Shuttleworth, Exparte, 89. 136.
Shuttleworth v. Stephens, 19. 302.
Siffkin v. Walker, 42. 59.
Sidford v. Chambers, 285. 287.
Sigel v. Jebb, 123.
Simpson v. Griffin, 397.
Simpson v. Pogson, 116.
Slater v. West, 367.
Smallwood v. Vernon, 95.
Smart v. Dean, 165.
Smith, Ex parte, 80. 325. 351.
Smith v. Abbot, 186.
Smith v. Bechet, 74. 232.
Smith v. Bellamy, 270. 288.
Smith v. Boheme, 12, 13.
Smith v. Buchanan, 92.
Smith v. Chester, 83. 280. 282, 283.
Smith v. Clarke, 137. 268.
Smith v. Delafontain, 182, 183.
Smith v. De Witts, 127.
Smith v. De Wruitz, 296.
Smith v. Ferrand, 97.
Smith v. Jerves, 59. 267.
Smith v. Kendall, 23. 27. 257.
Smith v. Knox, 83. 89. 102. 111. 381.
Smith v. M'Clure, 263. 275.
Smith v. Mercer, 244, 245, 246. 396.
Smith v. Mullett, 206. 208.
Smith v. Nightingale, 12.
Smith v. Nissen, 180.
Smith v. Payne, 129.
Smith v. Pickering, 128. 136.
Smith v. Shepperd, 241.
Smith v. Thatcher, 200. 224. 271.
Smith v. Whiting, 384. 393.
Smith v. Wilson, 11.
Smith v. Woodcock, 272.
Snaith v. Mingay, 29. 131.
Snow v. Leatham, 367.
Snow v. Peacock, 359. 366.
Snow v. Saddler, 367.
Solarte v. Melville, 119.
Sollers, Ex parte, 349.

Soloman v. Turner, 105. 107.
Solomons v. Bank of England, 10. 360.
Soper v. Dible, 262.
Soward v. Palmer, 102.
Spencer v. Smith, 115.
Splitgerber v. Kohn, 4. 278.
Spooner v. Gardiner, 110. 124. 226.
Sproule v. Legg, 26. 151. 264.
Sproat v. Matthews, 173. 186. 187, 188.
Stanton v. Blossom, 393.
Staples v. Okines, 229. 304.
Starke v. Cheeseman, 20. 43. 270. 272.
Starke v. Highgate Archway Company, 55.
Stedman v. Gooch, 96. 149.
Stedman v. Martinnant, 329.
Steel v. Bradfield, 278.
Steers v. Lashly, 116.
Stevens v. Hill, 92.
Stevens v. Jackson, 56.
Stevens v. Lynch, 83. 221. 302.
Stevens v. Thacker, 85.
Stewart v. Eden, 394.
Stewart v. Fry, 94.
Stewart v. Kennett, 197.
Stock v. Mawson, 2.
Stone, Ex parte, 327.
Stone v. Metcalf, 14. 278.
Stonehouse v. Read, 345.
Story v. Atkins, 3.
Stoveld v. Brewin, 273.
Stoveld v. Postan, 118.
Stratton v. Hill, 253.
Strong v. Hart, 98.
Sturdy v. Henderson, 31.
Sturges v. Derrick, 234.
Sugars v. Brinkworth, 114.
Sutton, Ex parte, 45.
Sutton v. Morgan, 311.
Sutton v. Toomer, 33, 34. 142.
Swan v. Cox, 187.
Swan v. Steele, 59. 64. 130.
Swasey v. Vanderheyden, 384.
Swears v. Wells, 33.
Sweeting v. Fowler, 24. 277.
Swinyard v. Bowes, 96. 203, 204.
Symonds v. Parmenter, 257.

Taft's Case, 375.
Tanner v. Bean, 267, 268.
Tapley v. Martins, 98.
Tassell v. Lewis, 8. 82. 158. 211. 248.
Tate v. Halbert, 111.
Tate v. Hibbert, 11, 12. 240.
Tatlock v. Harris, 254.
Taylor v. Bryden, 394.
Taylor v. Briggs, 99.
Taylor v. Croker, 56. 130. 280.
Taylor v. Dobbins, 4. 22.
Taylor v. Hague, 33.
Taylor v. Jones, 168. 220.
Taylor v. Kinlock, 25.
Taylor v. Mather, 133.
Teague's Case, 374.
Teague v. Hubbard, 44.
Teed v. Elworthy, 257.
Tekill v. Carey, 11.
Tempest v. Ord, 95.
Thackray v. Blackett, 222. 224. 229. 234. 369.
Thatcher v. Dinsmore, 383.
Thomas, Ex parte, 73. 321. 325.
Thomas v. Bishop, 17. 47.
Thomas v. Newton, 116. 124. 295.
Thomason v. Frere, 48. 70.
Thompson v. Freeman, 129.
Thompson v. Giles, 352.
Thompson v. Morgan, 255.
Thornton v. Dick, 192.
Thornton v. Hargreaves, 129.
Thorpe v. Booth, 298.
Threlfall v. Webster, 272.
Thurston v. M'Kown, 387.
Thwaites v. Richardson, 279.
Tidmarsh v. Grover, 38.
Tindal v. Brown, 74. 145. 197.
Tinson v. Francis, 133.
Tompkins v. Ashby, 18.
Toms v. Powell, 248.
Tonson v. Francis, 112.
Took v. Hollingworth, 349.
Tootall, Ex parte, 13. 323.
Touting v. Hubbard, 73.
Towgood, Ex parte, 340.
Townsend v. Inglis, 44.
Trapp v. Spearman, 39.
Treacher v. Hinton, 200. 271.
Trecothick v. Edwin, 26.

Treuttel v. Barandon, 127. 138.
Triggs v. Newnham, 161.
Trier v. Bridgman, 3.
Trimmer v. Oddy, 178.
Trueman v. Fenton, 49. 108.
Trueman v. Hurst, 57.
Tunno v. Lague, 396.
Turner v. Hayden, 91. 147. 149. 268.
Turner v. Leech, 211. 234.
Turner v. Mead, 155.
Turner v. Taylor, 273.
Twopenny v. Young, 79.
Tye v. Gwynne, 106.
Tyte v. Jones, 33. 256.

U.

Upstone v. Marchant, 30.
Usher v. Dauncey, 70. 73. 131.

V.

Vandewall v. Tyrell, 213. 251.
Vansandau v. Corbsbie, 329.
Van Wart v. Woolley, 204.
Vaughan v. Fuller, 167. 216.
Vere v. Fleming, 66.
Vere v. Lewis, 24.
Vernon v. Boverie, 97.
Vincent v. Horlock, 137.

W.

Wackerbarth, Ex parte, 190. 192. 216. 251. 326.
Wade v. Beasley, 257.
Wagstaff, Ex parte, 344.
Wakefield Bank, Ex parte the, 350.
Waldridge v. Kennison, 281.
Walker, Ex parte, 332, 333. 335.
Walker v. Atwood, 188.
Walker v. Barnes, 73. 248. 310.
Wallace v. Hardacre, 112. 128.
Walmsley v. Child, 356.
Walpole v. Pulteney, 84, 85.
Walter v. Haynes, 206.
Walton, Ex parte, 328.
Walton v. Hastings, 35. 37, 38.

Walwyn v. St. Quintin, 2. 76. 82. 227, 228. 249. 250. 257. 307.
Wankford v. Wankford, 80.
Ward v. Evans, 97. 155.
Waring, Ex parte, 352.
Warmsley v. Macey, 260, 261.
Warrington v. Furbor, 201, 202.
Warwick v. Bruce, 57.
Warwicke v. Noakes, 369.
Waters v. Brogden, 32.
Waters v. Paynter, 284.
Watkins v. Maule, 128. 130. 134.
Watson v. Medex, 343.
Watt's case, 377.
Watts v. Toussaint, 311.
Waynam v. Bird, 294.
Waynham v. Bend, 254. 268. 285.
Webb's Case, 377.
Webb v. Brook, 114.
Webber v. Maddox, 40.
Wegersloffe v. Keen, 188. 272.
Welby v. Drake, 74.
Wells v. Girling, 255.
Wells v. Masterman, 61.
Wellsheir v. Cox, 300.
Welsh v. Lindo, 388.
Western v. Wilmot, 256. 287.
Weston v. Clements, 390.
Wharton v. Walker, 94.
Whatley v. Tucker, 86.
Wheelwright v. Jackson, 129.
Whiley's Case, 375.
Whitaker v. Morris, 216.
Whitcombe v. Whiting, 299.
White v. Ledwich, 27.
Whitehead v. Tuckett, 45.
Whitfield v. Lord Despencer, 369.
Whitfield v. Savage, 229.
Whitlock v. Underwood, 25. 28.
Whittingham v. Burgoyne, 114.
Whitwell v. Bennett, 32. 255. 264.
Whitwell v. Johnson, 394.
Wicks v. Gogerly, 120.
Wiffen v. Roberts, 105. 153. 306.
Wigan v. Fowler, 11. 50.
Wightman v. Townroe, 55.
Wild v. Rennards, 150.
Wildman, Ex parte, 334.
Wilford v. Hankin, 164.

Wilkinson v. Johnson, 139. 245. 247.
Wilkinson v. Lutwidge, 174.
Wilks v. Back, 47.
Wilks v. Jacks, 229.
Williams, Ex parte, 309.
Williams v. Bingley, 63.
Williams v. Everitt, 92.
Williams v. Germaine, 154. 191.
Williams v. Harrison, 56, 57.
Williams v. Jones, 92.
Williams v. Keats, 67, 68.
Williams v. Smith, 158. 209.
Williams v. Thomas, 66. 70.
Williams v. Whitaker, 77.
Williams v. Williams, 262.
Williamson v. Bennett, 14.
Williamson v. Johnson, 45. 268. 286.
Williamson v. Losh, 110.
Williamson v. Watts, 57.
Willis v. Barrett, 23. 265.
Willis v. Dyson, 66.
Willis v. Freeman, 104. 128.
Willison v. Patteson, 48. 384.
Wilson, Ex parte, 80, 81. 229. 315. 319.
Wilson v. Kennedy, 33. 256.
Wilson v. Justice, 34. 37.
Wilson v. Swabey, 198.
Wilson v. Visar, 33. 167.
Winch v. Fenn, 120.
Windham v. Wither, 259.
Windle v. Andrews, 73. 173. 215.
Winstanley v. Bowden, 116.
Wise v. Prouse, 258.
Withall v. Masterman, 83.
Witherly v. Sarsfield, 271.
Wittersheim v. Lady Carlisle, 297.
Wolff v. Oxholm, 383.
Wood v. Brown, 217.
Wood v. Dodgson, 329.
Wood v. Holbeer, 62.
Woodbridge v. Spooner, 11. 111. 136. 278.
Woodroofe v. Hayne, 109.
Wookey v. Pole, 126, 127.
Woolsey v. Crawford, 83. 315.
Worrall, Ex parte, 336.
Wrightson v. Pullan, 67, 68.
Wright v. Reed, 10.
Wright v. Riley, 29.
Wright v. Shawcross. 209 211.

Wyatt v. Bulmer, 104. 116.
Wyatt v. Campbell, 122.
Wylie's case, 379.
Wynne v. Raikes, 172, 173. 175.

Y.

Yarborough v. Bank of England, 55. 136.
Yates v. Freckleton, 240.
Yates v. Bell, 93.
Yates v. Groves, 16.
Yeomans v. Bradshaw, 11.
Yonge, Ex parte, 329.
York v. Blott, 304.
Young v. Adams, 386.
Young v. Forbes, 169. 396.
Young v. Hockley, 253. 328.
Young v. Wright, 118. 268. 276.

Z.

Zinck v. Walker, 348.

CHAPTER I.

OF BILLS AND NOTES IN GENERAL.

Definition of a bill of exchange.
Foreign bills.
Inland bills.
Definition of a promissory note.
Statute 3 & 4 *Ann.*
Notes under 20*s.*
Notes under 5*l.*
Bankers' notes.
Bankers' checks.
Bank notes.
Coal notes.
Insolvent notes.
A bill of exchange is a chose in action.
A bill or note must be for the payment of a specific sum of money only.
A bill or note must not be conditional or contingent.
Time of payment contingent.
Fund contingent.
Parties contingent.
Wording of bills and notes.
Whether certain instruments are bills or notes.

Definition of a bill of exchange.] A bill of exchange is an open letter of request from one man to another, desiring him to pay a sum named therein to a third person on his account. 2 *Blackstone's Com.* 466. A bill of exchange, in its own nature, amounts to nothing more than an authority, (*Note* 1.) on the one hand, to pay to the order of the person to whom it is made payable; and on the other, to an undertaking on the part of the acceptor, that he will pay it. *Per Hotham, B. Gibson v. Minet,* 1 *H. Bl.* 586 The theory of a bill of exchange, is, that it is an assignment to the payee, of a debt due from the acceptor to the drawer, and that acceptance imports that the acceptor is a

debtor to the drawer, or at least has effects of the drawer's in his hands. *Per Eyre, C. B. Gibson v. Minet*, 1 *H. Bl.* 602. A bill of exchange is nothing but an order on the drawee to pay so much out of the effects of the drawer in his hands, and the acceptance is evidence in law that the acceptor has such effects. *Per Heath, J. Stock v. Mawson*, 1 *B.* & *P.* 291. In a regular bill transaction, the drawing by A, payable to B or payable to A's own order, and indorsing the bill to B, is a mode by which the drawer pays a sum of money to his payee or indorsee through an acceptor. *Per Eyre, C. J. Walwyn v. St. Quintin*, 1 *B.* & *P.* 654. A bill of exchange is an order or command to the drawee, who has, or is supposed to have, effects of the drawer in his hands to pay. When the drawee has accepted he is the original debtor, (*Note* 2.) and due diligence must be used in applying to him. The drawer is only liable in default of payment by him, due diligence having been used. *Per Lord Mansfield, Heylin v. Adamson*, 2 *Burr.* 674. When a bill of exchange is indorsed by the person to whom it was made payable, as between the indorser and indorsee, it is a new bill of exchange, and the indorser stands in the place of the drawer. *Id. Ibid. Buller v. Crips*, 6 *Mod.* 30. *Hill v. Lewis*, 1 *Salk.* 132. *Ballinghalls v. Gloster*, 3 *East*, 482.

Foreign bills.] Foreign bills are bills made or payable abroad. In general they consist of several parts. The several parts of a bill are called a set. Each part contains a condition that it shall be payable only so long as all the others remain unpaid. (*Note* 3.) In other respects all are of the same tenor. This condition should be inserted in each part, and should in each mention every other part of the set, for if a man, with an intention to make a set of three parts, should omit the condition in the first, and make the second with a condition mentioning the first only, and in the third alone take notice of the other two (which is the mode pointed out by Molloy, Malynes and Marius), he might perhaps in some cases be obliged to pay each; for it might be questionable if it would be any defence to an action on the second that he had paid the third, or to an action on the first that he had paid either of the others. (*See Davison v. Robertson*, 3 *Dow*, 218.) But an omission is not perhaps material, which, upon the face of the condition, must necessarily have arisen from a mistake, as if in the enumeration of the several parts one of the intermediate ones were to be omitted; for instance, "Pay this my first of exchange, second and *fourth* not paid." Where a bill consists of several parts, each ought to be delivered to the person in whose favour it is made (unless one is forwarded to the drawee for acceptance), otherwise there may be difficulties in negotiating the bill or obtaining payment. *Bayley*, 22. 24.

Inland bills.] Inland bills are supposed to have come into use about the middle of the seventeenth century. Holt, C. J. said he remembered when they first began, and the plaintiff declared on a particular custom between London and Bristol. *Buller v. Crips*, 6 *Mod.* 29. But it was soon afterwards held that all the difference between inland and foreign bills was, that foreign bills must be protested before a notary public before the drawer can be charged, but that inland bills need no protest. *Ibid.*

Definition of a promissory note.] A promissory note is a written promise for the payment of money, and while in the hands of the payee has this resemblance to a bill, that it is for the payment of money absolutely and at all events, and when transferred it is exactly similar to a bill of exchange. *Bayley on Bills*, 1. 3. While a note continues in its original shape of a promise from one man to another, it bears no similitude to a bill; but when it is indorsed the resemblance begins, for then it is an order by the indorser upon the maker, to pay the indorsee, which is the very definition of a bill: the indorser is the drawer, the maker of the note the acceptor, and the indorsee the person to whom it is made payable; and all the authorities and particularly Lord Hardwicke in a case of *Hamerton v. Mackarell, M.* 10 *Geo.* 2. put promissory notes on the same footing with bills of exchange. *Heylin v. Adamson*, 2 *Burr.* 676. It has been frequently said, that the statute (3 & 4 Ann. c. 9. *vide infra*), puts notes on the same footing with bills of exchange. *Bishop v. Young*, 2 *B. & P.* 84. *Carlos v. Fancourt*, 5 *T. R.* 486. *Brown v. Harraden*, 4 *T. R.* 155. It is not necessary that a note should be in itself negotiable; it is sufficient that it be a note for the certain payment of a sum of money, whether negotiable or not. *Per Cur. R. v. Box*, 6 *Taunt.* 328.

Statute 3 & 4 *Ann.*] By statute 3 & 4 Ann. c. 9. made perpetual by 7 Ann. c. 25., s. 3. reciting that it had been held that notes payable to a person or his order were not assignable or indorsable over, (see *Clarke v. Martin*, 2 *Lord Raym.* 758. *Story v. Atkins*, *Id.* 1430. *Brown v. Harraden*, 4 *T. R.* 152. *Trier v. Bridgman*, 2 *East*, 360), it is enacted that all notes in writing that after 1st May, 1705, shall be made and signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant, or trader, who is usually entrusted by him, her, or them, to sign such promissory notes for him, her, or them, whereby such person or persons, body politic and corporate, his, her, or their servant or agent as aforesaid doth or shall promise to pay to any other person or persons, body politic and corporate, his, her or their order, or unto bearer, any sum of money mentioned

in such note, shall be taken and construed to be, by virtue thereof, due and payable to any such person or persons, body politic and corporate to whom the same is made payable, and also every such note payable to any person or persons, body politic and corporate, his, her, or their order, shall be assignable or indorsable over in the same manner as inland bills of exchange are or may be according to the custom of merchants, and that the person or persons, body politic and corporate to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same, in such manner as he, she, or they might do upon any inland bill of exchange made or drawn according to the custom of merchants, against the person or persons, body politic and corporate, who, or whose servant or agent as aforesaid, signed the same, and that any person or persons, body politic and corporate to whom such note that is payable to any person or persons, body politic and corporate, his, her or their order, is indorsed or assigned, or the money therein mentioned ordered to be paid by indorsement thereon, shall and may maintain his, her, or their action for such sums of money, either against the person or persons, body politic and corporate who or whose servant or agent as aforesaid signed such note, or against any of the persons that indorsed the same, in the like manner as in cases of inland bills of exchange. *See Appendix, No.* 1.

This act being made for the advancement of trade, ought therefore to receive a liberal construction. *Per Cur. Milne v. Graham*, 1 *B. & C.* 193. 2 *D. & R.* 293. *S. C.* Thus it has been held that a foreign note, as a note made in Scotland, is both within the words and the spirit of the act. *Ibid. Bentley v. Northouse*, 1 *M. & M.* 66. In several cases, previously to the above, parties had recovered without objection on notes made abroad. *Pollard v. Herries*, 3 *B. & P.* 335. *Houriet v. Morris*, 3 *Campb.* 303. *Roche v. Campbell*, 3 *Campb.* 247. *Splitgerber v. Kohn*, 1 *Stark.* 125. Though in one case the court had intimated a strong opinion that the statute did not apply to foreign notes. *Carr v. Shaw*, 39 *G.* 3. *Bayley*, 22. The statute speaks of notes *signed* by the party, yet a note beginning "*I, W. S.* promise to pay," &c. is as good as if signed with the name. *Taylor v. Dobbins*, 1 *Str.* 399. *Elliott v. Cooper*, 2 *Lord Raym.* 1376. 1 *Str.* 609. *S. C.*

Notes under 20*s.*] By 48 G. 3. c. 88. s. 2. all promissory or other notes, bills of exchange, or drafts or undertakings in writing, being negotiable or transferable for the payment of any sum or sums of money or any orders, notes or undertakings in writing being negotiable or transferable for the delivery of any goods, specifying their value in money less than the sum of 20*s.* in the whole, theretofore made or issued, or which shall hereafter be made or issued, shall from and after the 1st Octo-

ber 1808, be and the same are thereby declared to be absolutely void and of no effect. By sec. 2. a penalty not exceeding 20*l.* is imposed upon any person publishing or uttering any such notes &c. recoverable before a justice of the peace. *See Appendix, No.* 2.

Notes under 5l.] By 17 Geo. 3. c. 30. s. 1. made perpetual by 27 Geo. 3. c. 16. all promissory or other notes, bills of exchange, or draughts, or undertakings in writing, being negotiable or transferable for the payment of 20*s.* or any sum of money above that sum, and less than 5*l.*, or on which 20*s.* or above that sum, and less than 5*l.* shall remain undischarged, and which shall be issued within that part of Great Britain called England, at any time after 1st January 1778, shall specify the names and places of abode of the persons respectively, to whom or to whose order the same shall be made payable, and shall bear date before or at the time of drawing or issuing thereof, and not on any day subsequent thereto, and shall be made payable within the space of twenty-one days next after the day of the date thereof, and shall not be transferable or negotiable after the time thereby limited for payment thereof; and every indorsement to be made thereon, shall be made before the expiration of that time, and bear date at or not before the time of making thereof, and shall specify the name and place of abode of the person or persons to whom or to whose order the money contained in every such note, bill, draught or undertaking is to be paid, and that the signing of every such note, bill, draught or undertaking, and also, of every such indorsement, shall be attested by one subscribing witness at least; and which said notes, bills of exchange, or draughts or undertakings in writing may be made or drawn, in words to the purport or effect, as set out in the schedules thereunto annexed, No. 1 and 2. And that all promissory or other notes, bills of exchange, or draughts or undertakings in writing, being negotiable or transferable for the payment of 20*s.*, or any sum above that sum and less than 5*l.* or on which 20*s.* or above that sum and less than 5*l.* shall remain undischarged, and which shall be issued within that part of Great Britain called England at any time after the said 1st day of January 1778 in any other manner than as aforesaid, and also every indorsement on any such note, bill, draught, or undertaking to be negotiated under this act, other than as aforesaid, shall be absolutely void.

SCHEDULE.

No. 1.

(*Place*) (*Day*) (*Month*) (*Year*)
Twenty-one days after date, I promise to pay to A. B. of

(*place*) or his order, the sum of for value received by
Witness E. F. C. D.

And the indorsement toties quoties.

(*Day*) (*Month*) (*Year*)
Pay the contents to G. H. of (*place*) or his order.
Witness J. C. A. B.

No. 2.

(*Place*) (*Day*) (*Month*) (*Year*)
Twenty-one days after date pay to A. B. of (*place*) or his order, the sum of value received as advised by C. D.
To E. F. of (*place*)
Witness G. H.

And the indorsement toties quoties.

(*Day*) (*Month*) (*Year*)
Pay the contents to J. H. of (*place*) or his order.
Witness L. M. A. B.

By statute 37 Geo. 3. c. 32. the statutes of 15 Geo. 3. and 17 Geo. 3. c. 30. so far as the same relate to the making void of promissory notes, or drafts, or undertakings in writing, payable on demand to the bearer thereof for any sum of money less than the sum of 5*l.* in the whole, and also to restrain the publishing, or uttering, and negotiating of any such notes, drafts or undertakings as aforesaid were after 2d March 1797 suspended; and by various statutes, and ultimately by 3 Geo. 4. c. 70. the suspending statute of 37 Geo. 3. was continued. But now by statute 7 Geo. 4. c. 6. s. 1. (*see Appendix, No.* 3.) the 3 Geo. 4. c. 70. is repealed, whereby the statute 37 Geo. 3. c. 30. has ceased to operate, and new provisions are enacted for the partial suspension of the 17 Geo. 3. c. 30.

By 7 Geo. 4. c. 6. sec. 2. the statute 17 Geo. 3. c. 30. shall not extend or be construed to extend to any such promissory note or forms of promissory notes payable to bearer on demand of any bankers or banking companies or other person or persons in England, duly licensed, as shall have been stamped before the 5th February 1826, under the provisions of any act or acts relating to the stamp duties upon promissory notes or bills of exchange under the sum of 5*l.*; nor to any promissory notes of the governor and company of the bank of England, payable to the bearer on demand for any sum under 5*l.* which shall have been made out and bear date before the 10th day of October 1826, but all such promissory notes so duly stamped or so made out and bearing date as aforesaid, may be issued and re-issued by all such bankers and banking companies, and persons aforesaid, and by the governor and company of the bank of England respectively until the 5th April 1829.

By sec. 3. if any body politic or corporate or any person or persons shall from and after the passing of this act and before 5th April 1829, make, sign, issue or re-issue in England, any promissory note payable on demand to the bearer thereof, for any sum of money less than the sum of 5*l.* except such promissory note or form of note as aforesaid (*the notes stamped before 5th February* 1826) and except such promissory note of the governor and company of the bank of England as shall have been or shall be made out and bear date before 10th October 1826; or if any body politic or corporate, or person or persons shall after 5th April 1829, make, sign, issue or re-issue in England, any promissory note in writing payable on demand to the bearer thereof, for any sum of money less than 5*l.* then, and in either of such cases, every such body politic or corporate, or person or persons so making, signing, issuing or re-issuing any such promissory note as aforesaid, except as aforesaid, shall for every such note so made, signed, issued or re-issued, forfeit the sum of 20*l.*

By sec. 4. if any body politic or corporate, or person or persons in England, shall from and after the passing of this act publish, utter or negotiate, any promissory or other note, (not being a note payable to bearer on demand, as is hereinbefore mentioned) or any bill of exchange, draft or undertaking in writing, being negotiable or transferable for the payment of 20*s.* or above that sum and less than 5*l.*, or on which 20*s.* or above that sum and less than 5*l.* shall remain undischarged, made, drawn, or indorsed in any other manner than as is directed by the said act 17 Geo. 3. c. 30. every such body politic or corporate, or person or persons so publishing, uttering, or negotiating any such promissory or other note (not being such note payable to bearer on demand as aforesaid), bill of exchange, draft or undertaking in writing as aforesaid, shall forfeit and pay the sum of 20*l.*

By sec. 5. the penalties under this act which are in lieu of the penalties imposed by 17 Geo. 3. c. 30. may be recovered, &c. in the same manner as penalties under the stamp acts.

By sec. 9. this act is not to extend to any draft or order drawn by any person or persons, on his, her or their banker or bankers, or on any person or persons acting as such banker or bankers for the payment of money held by such banker or bankers, person or persons, to the use of the person or persons by whom such draft or order shall be drawn.

By sec. 10. every promissory note payable to bearer on demand for any sum of money under 20*l.* which shall be made and issued after 5th April 1829, shall be made payable at the bank or place where the same shall be so made and issued as aforesaid, provided that nothing therein contained shall extend to prevent any such promissory note from being made payable

treated as money or cash in the ordinary course and transaction of business. By the general consent of mankind, they are as much money as guineas themselves are, and on payment of them, whenever a receipt is required, the receipts are always given as for money, not as for securities or notes. *Per Lord Mansfield, Miller v. Race,* 1 *Burr.* 457. 3 *Atk.* 232. *Wright v. Reed,* 3 *T. R.* 554. So in *Solomons v. the Bank of England,* 13 *East,* 138, it is said by Grose, J. that bank notes are to be considered as cash. They pass by a will bequeathing the testator's money or cash; *Fleming v. Brook,* 1 *Scho. & Lef.* 318. 1 *Burr.* 457; and may be the object of a donation *mortis causâ, Miller v. Miller,* 3 *P. Wms.* 356; and may be described as "money" in the memorial of an annuity. *Wright v. Reed,* 3 *T. R.* 554. *Cousins v. Thompson,* 6 *T. R.* 335. It is said to have been held that an action for *money had and received* will not lie against a person who finds bank notes, unless money has been actually received for them, *Noyes v. Price,* 16 *Geo.* 3. *Select Cases,* 242. *see Pickard v. Bankes,* 13 *East,* 20; unless perhaps the receipt of their value may be presumed. *Longchamp v. Kenny, Dougl.* 138. They cannot be taken in execution. *Francis v. Nash, Rep. temp. Hardw.* 53. *Knight v. Criddle,* 9 *East,* 48. A tender of bank notes is not good, if objected to at the time of tender, but it is good if not objected to. *Grigby v. Oates,* 2 *B. & P.* 526. *Wright v. Reed,* 3 *T. R.* 554. *Brown v. Saul,* 4 *Esp.* 267. As to the remedy for lost notes, *see post, Chap.* XV. As to stealing the same and forgery, *see post, Chap.* XVI. As to bank notes under 5*l.* *see* 7 *Geo.* 4. *c.* 6. *ante. p.* 6.

Coal notes.] By stat. 3 G. 2. c. 26. s. 7. all lightermen or other buyers of or contractors for coals, on board of any ship or vessel in the port of London, shall, at the time of the delivery of such coals, either pay for the same in ready money, or for such part thereof as shall not be paid for, shall give their respective promissory notes or notes of their hands for payment thereof, expressing therein the words *value received in coals,* payable at such day or days, time or times, as shall for that purpose be agreed upon between such lighterman or other buyer of or contractor for coals, and the master or owner of such ship or vessel or his agent or factor on his behalf, and that all such notes in case of non payment at the respective days and times therein mentioned, shall, and may be protested or noted in such manner as inland bills of exchange may now be, and in default of such protesting and notice by any indorsee, and notice thereof by such indorsee to the respective indorser or indorsers within twenty days after such failure of payment, such respective indorser or indorsers to whom such notice shall not be given, shall not be chargeable with or liable to answer or pay such sum of money as shall be mentioned to be payable by such note or notes, nor

any part thereof. By sec. 8, lightermen, &c. refusing to give notes and to insert the words *value received in coals*, and masters taking such notes without the words *value received in coals*, are subjected to a penalty of 100*l*. This act extends only to contractors for coals, and to cases between an indorser and indorsee. *Smith v. Wilson, And.* 187. It is said to have been held that when these notes are not drawn in the form recognised by the statute, they are not void, but that the effect is to subject the party to a penalty. *Per Holroyd, J. Wigan v. Fowler*, 1 *Stark.* 463.

Insolvent notes.] Where a prisoner is brought up to be discharged under the Lords' act, 32 Geo. 3. c. 28. and the creditor insists on his being detained in prison, he must agree in writing, signed with his name or mark (or if he be out of England, under the hand of his attorney) to pay and allow the prisoner weekly a sum not exceeding 3*s*. 6*d*. (or if more creditors than one insist on his detention, not exceeding 2*s*. a week each, 37 *Geo.* 3. *c.* 85. *s.* 34. *But see Barnes*, 377. 389, 90. *Tidd*, 385.) to be paid on Monday in every week so long as the prisoner shall remain in execution, and in every such case the prisoner shall be remanded, 32 *Geo.* 2. *c.* 28. *s.* 13. *Tidd*, 385. *See further as to these notes, Ib.* 386. Such notes do not require a stamp. *Tekill v. Carey*, 7 *T. R.* 670. If failure be made in payment of the weekly sums, the prisoner upon application to the court in term time, or to a judge in vacation, may be discharged out of custody, on executing an assignment and conveyance of his estate and effects, 32 *Geo.* 2. *c.* 28. *s.* 13.

A bill of exchange is a simple contract.] A bill of exchange or promissory note, is a simple contract, and is governed in general by the same rules which affect other simple contract debts. It therefore, for the purposes of administration, follows the person of the debtor, and is *bona notabilia* in the diocese in which he is resident at the time of his death. *Yeomans v. Bradshaw, Carth.* 373. 3 *Salk.* 60. 164. *Comb.* 392. *S. C.* For the same reason it is within the Statute of Limitations, and must be sued on within six years. *Vide post, Chap.* XII.

A bill of exchange is a chose in action.] A bill of exchange or promissory note is merely a chose in action, and cannot therefore be the subject of a donation *mortis causâ*. *Miller v. Miller*, 3 *P. Wms.* 365. *Tate v. Hibbert*, 2 *Ves. J.* 111. *Holliday v. Atkinson*, 5 *B. & C.* 503. *See Lawson v. Lawson*, 1 *P. Wms.* 441. *and Woodbridge v. Spooner*, 2 *B. and A.* 233. But the delivery of a check, by a person on the approach of death, is as it seems good as a gift, if the donee receives the amount from the bankers in the donor's lifetime, or before the

banker has notice of the donor's death, or if the donee negotiate the check for a valuable consideration, or in payment of a debt; but such check will not operate as an appointment of so much, if the donee retains it in his possession till after the donor's death. *Tate v. Hibbert*, 2 *Ves. J.* 111. On the same ground it was held that bank notes, &c. cannot be taken in execution, for though assignable over, yet they remain in some measure choses in action. *Francis v. Nash*, *Rep. temp. Hardw.* 53. *Knight v. Criddle*, 9 *East*, 48.

A bill or note must be for payment of a specific sum of money only.] A bill or note must be for the payment of *money* (*Note* 4). A promise to pay money and do some other thing, *ex. gr.* deliver a horse, is not within the statute, *Moor v. Vanlute*, *B. N. P.* 272. *Martin v. Chauntry*, 2 *Str.* 1271. So a promise to pay 300*l.* to B. or order, in three good East India bonds. *B. N. P.* 272. *Smith v. Boheme*, *Gilb. Ca. L. & E.* 93. So a promise to pay "in cash or bank of England notes." *Ex parte Imeson*, 2 *Rose*, 225. *Bayley*, 7. *R. v. Wilcox*, *Bayley*, 8. *Ex parte Davison*, *Buck*, 31. So where the instrument was, "I promise to pay J. E. the sum of 65*l.* with lawful interest for the same, three months after date, and all other sums which may be due to him;" Lord Ellenborough was of opinion that the instrument was too indefinite to be considered as a promissory note, and that since the whole constituted an entire promise, it could not be divided into parts. *Smith v. Nightingale*, 2 *Stark. N. P. C.* 375. But a promise to pay so many *pound* instead of *pounds*, is a good note. *R. v. Post*, *Bayley*, 8. Where the defendant promised to pay 400*l.* to the representatives of J. S. "first deducting thereout any interest or money J. S. might owe to the defendant," it was held that the deduction resting entirely in contingency, the instrument could not be considered as a promissory note to pay a certain or definite sum at all events. *Barlow v. Broadhurst*, 4 *B. Moore*, 471.

A bill or note must not be conditional or contingent.] A bill or note must be absolute in its terms, and if there be any condition or contingency, either with regard to the time of payment, or the fund out of which payment is to be made, or the parties by or to whom the payment is to be made, it will not be a valid bill of exchange within the custom of merchants, or a valid promissory note within the stat. 3 and 4 Ann. c. 9. Nor can such an instrument be considered, even between immediate parties, as a bill or note. *Leeds v. Lancashire*, 2 *Campb.* 207. *post.* If such an instrument constitute a valid agreement, in order to be enforced it must be stamped as such, and the plaintiff must declare as on a special agreement; *see Blanckenhagen v. Blundell*, 2 *B. and A.* 419. *Smith v. Nightingale*,

2 *Stark.* 375; unless it can be given in evidence under the count on an account stated. *Barlow v. Broadhurst*, 4 *B. Moore*, 471.

Where the time of payment is contingent.] A note to pay sixty guineas when the maker marries B. was held bad, for it is uncertain whether he will ever marry, and so the time of payment may never come. *Pearson v. Garrett*, 4 *Mod.* 242. *Comb.* 227. *S. C. Colehan v. Cooke, Willes*, 397. *Beardsley v. Baldwin*, 2 *Str.* 1151. 7 *Mod.* 417. *S. C.* So a note to pay money or surrender a person; for if the surrender is made, the money is never to be paid. *Smith v. Boheme, Gilb. Ca. L. and E.* 93, *cited*, 2 *Ld. Raym.* 1362, 7 *Mod.* 418. So where an order imported to be payable "provided the terms mentioned in certain letters written by the drawer were complied with," it was held that this order was no bill of exchange. *Kingston v. Long, Bayley*, 13. So where the instrument was "we promise to pay, &c. on the death of G. H. provided he leaves either of us sufficient to pay the said sum, or if we shall be otherwise able to pay it," this was held to be payable upon a contingency, and not an absolute note, nor negotiable. *Roberts v. Peake*, 1 *Burr.* 323. *and see Ex parte Tootell*, 4 *Ves.* 372. *post*, *Ch.* XIV. So a note promising to pay "on the sale or produce, immediately when sold, of the White Hart, St. Albans, Herts, and the goods, &c. value received," cannot be declared upon as a promissory note, though it be averred that, before the action commenced, the White Hart and the goods were sold. *Hill v. Halford*, 2 *B. & P.* 413. An instrument was given in evidence in the following form:—"We jointly and severally promise to pay to Mr. T. L. & Co. or order the sum of 200*l.* for value received by us. As witness our hands, &c. J. M., J. L., E. B." On the back of the instrument were these words, which were proved to have been written before it was signed by L. or B.:—"The within note is taken for security of all such balances as J. M. may happen to owe to T. L. and Co. not extending further than the within named sum of 200*l.*, but this note is to be in force for six months, and no money liable to be called for sooner in any case." In an action by L. & Co. against J. L., Lord Ellenborough was of opinion that, as between these parties, the instrument in question was only an agreement and not a promissory note; but that in the hands of a *bonâ fide* holder who received it as a promissory note, it might possibly be considered as such. *Leeds v. Lancashire*, 2 *Campb.* 205. But where there appeared to be the following indorsement on a note which did not distinctly appear to have been written before the note was signed:—"Although the within promissory note is payable by C. M. in months, my will and desire is, that the money shall not

be called in for two years, and that if the said C. M. shall wish for further time, he shall have the same without suit at law, until three years next after my decease." (Signed by the payee,) and it was contended that the indorsement was part of the note. *Per Lord Ellenborough;* " I have on one side of the paper a perfect note in point of law, and on the other, that which, if it had been stamped might have operated as a defeasance, but without a stamp I cannot look at it. Supposing, however, these words to be incorporated, they are words of mere indulgence and favor." *Stone v. Metcalf*, 1 *Stark.* 53. 4 *Campb.* 217. *S. C.* Where the instrument was :—" Borrowed and received of J. & J. W. the sum of 200*l.* in three drafts, dated as under, &c. which we promise to pay unto the said J. & J. W. with interest," &c. Lord Ellenborough thought that this was a special agreement, and not a promissory note, for the money was not to be paid at all unless the drafts were honoured. *Williamson v. Bennet*, 2 *Campb.* 418. Where a note had the following indorsement made before the note was subscribed ; " This note is given on condition that if any dispute shall arise between Mr. H. & Lady W. respecting the fir, the note to be void ;" it was held not to be a note payable at all events, but contingent. *Hartley v. Wilkinson*, 4 *M. & S.* 25. 4 *Campb.* 127. *S. C.* So an instrument in this form, " At thirty days after the arrival of the ship Paragon, at Calcutta, pay," &c. was held not to be a bill of exchange. *Palmer v. Pratt*, 2 *Bingh.* 185. 9 *B. Moore*, 388. *S. C.* But if the time at which the bill or note is made payable must happen, although it is not certain when it will happen, the bill or note is good. Thus, it has been held that a promissory note to pay within two months after such a ship is paid off is a good note, because the ship would certainly be paid off one time or another. *Andrews v. Franklin*, 1 *Str.* 24. recog. *Willes*, 399. but in *Beardsley v. Baldwin* as reported 1 *Selw. N. P.* 367. *4th Ed.* the court said that as to *Andrews v. Franklin*, if it ever was determined, which they could not find, it must have been decided on the certainty observed in the return of ships, and which must be looked upon as an event in itself not contingent ; and see 1 *Wils.* 263. where it is said *arg.* that *Andrews v. Franklin*, was never determined. Where the note was " I promise to pay J. S. 11*l.* at the payment of the ship Devonshire," it was held good, and Lord Hardwicke is reported to have said, " as to the time, this note is certainly within the statute, if it had been made payable at any precise future day, and if it be uncertain at first but referred to a subsequent fact to make it certain, when that fact happens (as in this case it was averred that the ship Devonshire was paid), it is as much reduced to a certainty as if the day had been mentioned at first." *Lewis v. Orde*, 1 *Selw. N. P.* 367. 4 *Ed. Cunningham, Bills of Exchange.* 127. *2nd Ed.* The reasoning of

Lord Hardwicke is in opposition to the cases of *Carlos v. Fancourt*, 5 *T. R.* 482, *post, and Hill v. Halford*, 2 *B. & P.* 413. *ante, p.* 13 When the note was, "I promise to pay G. P. or order 8*l.* upon the receipt of his, the said G. P's. wages from his Majesty's ship the Suffolk," &c. the court, it is said, on the authority of *Andrews v. Franklin*, held the note good. *Evans v. Underwood*, 1 *Wils.* 262. But this decision has been doubted, because it is uncertain, though the wages might be paid, whether the maker of the note would receive them. So where J. C. the maker of a note promised to pay to H. D. or order 150 guineas, ten days after the death of his father J. C., this was held a good promissory note. *Colehan v. Cooke*, *Willes*, 393. *S. C. in error*, 2 *Str.* 1217. And where a note was made payable, when the payee should come of age, and specifying the day, it was held that the time of payment was certainly fixed, and that the note was good. *Goss v. Nelson*, 1 *Burr.* 226. Upon the same principle the bills of exchange commonly called *billæ nundinales* have been held good, because, though these fairs were not always holden at a certain time, yet it was certain that they would be held. *Per Willes, J. C. Colehan v. Cooke*, *Willes*, 339. (*Note* 5.)

Where the fund out of which payment is to be is contingent.] Where the fund, out of which the payment of a bill or note is directed to be made, is contingent or limited, such bill or note is invalid. Thus, when a bill was drawn upon one Josceline to pay so much every month *out of his growing subsistence*, it was held not to be good, because the fund was uncertain. *Josceline v. Laserre*, *Fort.* 281. 10 *Mod.* 294, 317. *Willes*, 397. So where the bill was drawn payable "out of the monies in the drawee's hands belonging to the proprietors of the Devonshire mines, being part of the consideration money for the purchase of the manor of West Buckland," it was held, upon error, that this appointment to pay out of a particular fund which might or might not answer, was not a bill of exchange. *Jenny v. Herle*, 1 *Str.* 591. 2 *Ld. Raym.* 1361. 8 *Mod.* 266. *S. C.* So when a bill was made payable "out of the fifth payment when it should become due." *Haydock v. Lynch*, 2 *Ld. Raym.* 1563. So where payable, "out of W. S.'s money as soon as you shall receive it." *Dawes v. Deloraine*, 2 *W. Bl.* 782. 3 *Wils.* 207. *S.C.* So a note payable "out of the maker's money that should arise from his reversion of 43*l.* when sold," was held not to be a promissory note, but a special agreement. *Carlos v. Fancourt, in error*, 5 *T. R.* 482. So an order to pay a certain amount and interest, out of certain purchase money, for value received, is not a bill because it is payable out of a particular fund. *Yeates v. Groves*, 1 *Ves. J.* 280. So also a note "to pay at four years after date if I am then living, otherwise this bill to be null and

void," is not a good note, for it is not like a note payable on the maker's death, which must happen. *Braham v. Bubb*, 1826. *Chitty's Bills*, 43. *7th Ed.* So where the form of a bill was "Pay Mr. R. B. one month after date 200*l.* on account of freight of the Veale Galley, and this order shall be your sufficient discharge," the Chief Justice was of opinion that this was bad, on the objection to the fund out of which it was to be paid. *Bunbury v. Lisset*, 2 *Str.* 11, 12. It is said that in the above case, which was an order from the owner of a ship to the freighter, the bill was bad, because the quantum due for freight might be open to objection, but that such an order from the freighter is a good bill, because it is an admission that so much at least is due. *Bayley*, 18. Thus, when M'Lintot freighted a ship and drew upon Dunlop for the sum of 300*l.* in favour of the captain of the vessel, "on account of freight," in an action on the bill against the acceptor, no objection was taken that the money was payable out of a particular fund. *Pierson v. Dunlop, Cowper*, 571. *Bayley*, 18.

Though a bill or note will be invalid if the fund out of which payment is to be made be contingent, yet the mention of a particular fund out of which the drawee is to reimburse himself, will not vitiate, unless the payment is made contingent on the sufficiency of such fund. Thus where, on the 25th May, 1724, J. D. drew his bill of exchange, whereby he requested defendant one month after date to pay to the plaintiff or order 9*l.* 10*s.* "as my quarterly half pay to be due from 24th June to 27th September next, by advance," it was held a good bill, for it was not payable on a contingency, nor out of a particular fund, and was drawn upon the general credit of the drawer, and not out of the half-pay. *Mackleod v. Snee*, 2 *Ld. Raym.* 1481. 2 *Str.* 762. 2 *Barnard.* 12. *S. C.* So a promissory note, whereby the maker promised to pay "101*l.* 12*s.* value received for the premises in the street called Rosemary Lane," was clearly held to be within the stat. 3 & 4 Ann. c. 9. *Burchell v. Slocock*, 2 *Ld. Raym.* 1545. And where by a note the defendants promised to pay 25*l.* "being a portion of a value as under, deposited in security for the payment thereof," the court were clearly of opinion, that though, as between the original parties to the transaction, the payment of the notes was to be carried to a particular account, yet the defendants were liable on this note, which was payable at all events. *Haussoullier v. Hartsinck*, 7 *T. R.* 733. So also a note, whereby the maker promised to pay to A. B. 8*l.* "so much being to be due from me to C. D. my landlady at lady-day next, who is indebted in that sum to A. B." was held valid. *Anon. Select Cases*, 39.

Where the parties are contingent.] If there be a contingency as to the parties who are to pay or to be paid, the bill or note

will be invalid. Thus a note "to pay if the maker's brother do not pay by such a time" is bad. *Appleby v. Biddulph, B. N. P.* 272. *cited* 8 *Mod.* 363. So when the note was "I J. Connor promise to pay J. F. or his order 50*l.* with interest, &c." "J. Connor or else H. Bond," in an action against Bond, this was held not to be a note by him within the statute, because Bond's engagement was only to pay if Connor did not. *Ferris v. Bond,* 4 *B. & A.* 679. *Bayley,* 13. So a note whereby the maker promised to pay to A. or to B. and C. a sum of money for value received, was held not to be within the statute, for it was payable to either of the parties, only on the contingency of its not having been paid to the other. *Blanckenhagen v. Blundell,* 2 *B. & A.* 417.

Wording of bills and notes.] No particular words are necessary to constitute a bill or note, though it must be in writing. *Morris v. Lee,* 2 *Ld. Raym.* 1397. *Thomas v. Bishop, Rep. temp. Hardw.* 2. *Green v. Davies,* 4 *B. & C.* 239. "Deliver such a sum of money," makes a good bill. *Per Cur. Morris v. Lee,* 2 *Ld. Raym.* 1397. So a note promising to be accountable to A. or order for 100*l.* is good. *Morris v. Lee,* 2 *Ld. Raym.* 1396. *Str.* 629. 8 *Mod.* 362. *S. C.* So "I promise that J. S. or order shall receive 100*l.*" *Per Fortescue J., Morice v. Lee,* 8 *Mod.* 364. So "I do acknowledge that Sir A. C. has delivered to me all the bonds and notes for which 400*l.* were paid him on account of Col. S. and that Sir A. delivered me Major G.'s receipt and bill on me for 10*l.* which 10*l.* and 15*l.* 5*s.* balance due to Sir A. I am still indebted, and do promise to pay." *Chadwick v. Allen,* 2 *Str.* 706. So "I do acknowledge myself to be indebted to A. in —— to be paid on demand for value received." *Casborne v. Dutton,* 1 *Selw. N. P.* 363. 4*th ed.* So "Borrowed of J. S. 50*l.* which I promise *not* to pay;" for the court will reject the word *not. Cited per Ld. Mansfield in Russell v. Langstaffe, Bayley on Bills,* 6. 2 *Atk.* 32.

So "Received of Mr. D. Boaz 100*l.* which I promise to pay on demand, with lawful interest," it sufficiently appearing that Boaz was the payee. *Green v. Davies,* 4 *B. & C.* 235. *Poth. pl.* 31. *But see Pardessus Cours de Droit Com. vol.* ii. *p.* 358. Where an instrument was produced in the following words: "Mr. Nelson will much oblige Mr. Webb, by paying to T. Ruff or order twenty guineas on his account;" Ld. Kenyon was of opinion that it was a bill of exchange, being an order by one person to another to pay money to the plaintiff or his order, and that it ought to bear a stamp. *Ruff v. Webb,* 1 *Esp.* 129. But where an instrument was tendered in evidence in the following form, "Mr. L., please to let the bearer have seven pounds and place it to my account, and you will oblige your humble servant, R. S." Lord Tenterden thought no

stamp necessary, the paper not purporting to be a demand made by a party having a right to call on the other to pay; and that the fair meaning was, "you will oblige me by doing it." There was however other evidence to entitle the plaintiff. *Little v. Slackford*, 1 *M. & M.* 371.

Where a note was made in the following form, "Sixty days after date I promise to pay, &c. 200*l.* value received. For J. Matthew, T. Whitsmith, & T. Smithson —— J. Matthew." Lord Ellenborough held it sufficient on the face of it to bind the whole firm. *Lord Galway v. Matthew*, 1 *Campb.* 403. Where a note beginning "I promise to pay," was signed by two persons, Lord Kenyon held that it was either a joint or a several note. *March v. Ward, Peake*, 130. And the same point was ruled by Bayley J. in *Clark v. Blackstock, Holt*, 474. Where the note was (as in *Lord Galway v. Matthew*), "I promise to pay, &c." and signed "for W. S., W. P. S. and W. R. T.,——W. S." and W. S. was alone sued, the action was held to be rightly brought: *Per Bayley J.* "The words used are 'I promise to pay,' and it is signed by the defendant. What then is the import of these words? Surely that W. S. promises. It is true that he promises for himself and others, but he alone promises." *Hall v. Smith*, 1 *B. & C.* 407. 2 *D. & R.* 584. *S. C.*

A paper with the words "I O U eight guineas," was held by Lord Kenyon to be neither a promissory note nor a receipt. *Fisher v. Leslie*, 1 *Esp. N. P. C.* 426. *Accord. Israel v. Israel*, 1 *Campb.* 499. *Childers v. Boulnois, Dow. & Ry. N. P. C.* 8. But Lord Eldon C. J. held such an instrument to be a promissory note, though not negotiable. *Guy v. Harris, Chitty on Bills*, 428. *5th ed. Manning's Index*, 71, *2d ed.* In a very late case the following memorandum, "Mr. T. has left in my hands 200*l.*" was held not to be a promissory note or receipt, and to be admissible without a stamp. *Tompkins v. Ashby*, 6 *B. & C.* 541.

Whether certain instruments are bills or notes.] There are many cases in which doubts have arisen, whether the instrument is a bill of exchange or promissory note. Thus where it was in the following form:—

"Two months after date pay to the order of J. J. 72*l.* 11*s.* value received.

T. S.

At Messrs. J. M. & Co."

Lord Ellenborough held that this was properly declared on as a bill of exchange, and that M. & Co. might be considered as the drawees, though perhaps it might have been treated as a promissory note at the option of the holders. *Shuttleworth v. Stephens*, 1 *Campb.* 407. So where the instrument was as follows:—

" Two months after date, pay Mr. L. A. or order 40*l.* value received.

G. M.

at Sir John Perring, Shaw, Barber, & Co.
Bankers, London."

The word *at* being in very small letters, Gibbs C. J. said, that on the authority of the preceding case he should not have hesitated to decide, that in point of law the instrument was a bill of exchange, had the word *at* been distinctly written before the names of the drawees, but he left it to the jury whether the word *at*, from the manner in which it was written, was not inserted for the purpose of deception, and then the instrument would be a bill of exchange in point of fact, and the jury found accordingly. *Allan v. Mawson*, 4 *Campb.* 115. Where the instrument was :—

" Two months after date pay to me or my order the sum of 30*l.* 2*s.*

W. S.

" Payable at No. 1. Wilmot Street."

The court of C. P. held that this instrument was clearly a bill of exchange, and could be declared on as such ; that it was not necessary that the name of the party who afterwards accepted the bill should be inserted, it being directed to a particular place, which could only mean to the person who resided there, and that the defendant, by accepting it, acknowledged that he was the person to whom it was directed. *Gray v. Milner*, 8 *Taunt.* 739. 3 *B. Moore*, 90. *S. C.* A person was convicted of uttering a forged promissory note, which was as follows :—

" Two months after date, pay Mr. B. H. or order, the sum of 28*l.* 15*s.* value received.

J. J.

" At Messrs. S. & Co.
Bankers, London."

On an objection taken that the instrument so described was not in law a promissory note, the judges held it to be a bill of exchange, and not a promissory note. *Hunter's case, Russ. & Ry. C. C. R.* 511. *and see what is said by Littledale J. in the case next cited.*

Where the instrument was in the following form :—

" Three months after date, I promise to pay Mr. J. Bury or order 44*l.* 11*s.* 5*d.* value received.

J. Bury.

" J. B. Gruthorot, (indorsed) J. Bury.
25, Mountague Place,
Bedford Square."

and Gruthorot's name was written across the instrument; it was held by three of the judges that being of an ambiguous nature, the law would allow the holder at his option to consider it either as a promissory note or bill of exchange. Littledale J. was of opinion that the instrument was a promissory note. *Edis v. Bury*, 6 *B. & C.* 433.

A man may draw a bill of exchange upon himself. *Josceline v. Laserre, Fortes.* 288. *Starke v. Cheeseman, Carth.* 509. *Dehers v. Harriott*, 1 *Show.* 136. But in legal operation this is a promissory note, and the maker is not entitled to notice. *Roach v. Ostler*, 1 *M. & R.* 120.

CHAPTER II.

OF THE VARIOUS PARTS OF BILLS AND NOTES, INCLUDING STAMPS AND ALTERATIONS.

Drawer's name.
Drawee's name.
Payee's name.
Date.
Sum payable.
Payable to order.
Value received.
Stamp.
- Penalties.
- Stamping after the making.
- Foreign bills.
- Bills and notes bearing interest.
- Date and sight.
- Order for payment of money out of a particular fund.
- Bankers' drafts.
- Consequences of want of stamp.
- Different denomination.
- Re-issuing bills.

Alteration.
- After negotiation avoids a bill, though made with consent.
- With consent of parties before negotiation does not avoid the bill.
- What is an issuing of a bill or note.
- What alteration is material.
- Correction of mistake.

Drawer's name.] The name of the drawer of the bill or of the maker of the note written by himself, or some agent authorised by him, (*see post, Chap.* III.) must appear on the instrument, but it need not be subscribed, for it is sufficient if his

name appears in any part of it. "I, J. S. promise to pay," is as good as "I promise to pay," subscribed J. S. *Taylor v. Dobbins*, 1 *Str.* 399. *Saunderson v. Jackson*, 2 *B. & P.* 239. An allegation that the plaintiff made his bill of exchange, in writing, directed to A. B. and by the said bill requested, &c. implies that the plaintiff's name is written in the bill, else he could not request. *Ereskine v. Murray*, 2 *Ld. Raym.* 1542. *Elliot v. Cowper*, 1 *Str.* 609. 2 *Ld. Raym.* 1376. *S. C.* An agent, in drawing a bill for his principal, should either write the name of his principal only, or as is more usually done, should sign by procuration, "A. B. per procuration C. D." for should his own name only appear, he would be personally liable. *See post, Chap.* III. The manner in which one partner may draw a bill so as to bind his co-partners will be hereafter stated. *See post, Chap.* III.

Drawee's name.] The name of the drawee should appear on the face of the bill; but where a bill was not directed to any particular person, but, instead of such direction, were the words, "payable at No. 1. Wilmot Street," and A. B. who resided at that place, accepted the bill, it was held to be properly described as a bill of exchange; and that A. B. having by his acceptance, acknowledged that he was the person to whom it was directed, was liable as acceptor. *Gray v. Milner*, 8 *Taunt.* 739. 3 *B. Moore*, 90. *S. C. see Marius in Malyne*, 34. But such a bill should not be described in the declaration as directed to A. B. *Gray v. Milner*, 2 *Stark.* 336, *the first trial; sed quære.* Where a bill was directed to A. or in his absence to B., and began thus, "Gentlemen, pray pay," &c. and A. accepted it, and the declaration stated it a as bill directed to A., without noticing B., Holt, C. J. held it well. *Anon.* 12 *Mod.* 447. *Bayley*, 309. A bill drawn upon one man cannot be accepted by two, and therefore the names of all the persons intended to be charged as acceptors ought to be inserted in the bill. *Jackson v. Hudson*, 2 *Campb.* 448. The word "at" inserted before the name of the drawee will not alter the operation of the instrument so as to prevent it being considered a bill of exchange. *Ante*, *p.* 19.

Payee's name.] A bill or note may be made payable to order, to bearer, or to some specified person. *See R. v. Randall, Russ. & R. C. C. R.* 195. *R. v. Richards, Id.* 193. Where the name of the payee is not mentioned, it is said by Pothier, that if the drawer has declared from whom he has received the value, it is but reasonable to construe the instrument to be payable to that person. *Pothier, pl.* 31. *and see Green v. Davies*, 4 *B. & C.* 235, *ante*, *p.* 17. In a bill or note so issued a *bonâ fide* holder may insert his own name as payee. Thus, in an action against the drawer of a bill, where it appeared that it had been drawn in Jamaica, upon H. M. in London; a blank being left for

name of the payee, and that it had been negotiated in this country by one V., who indorsed it to the plaintiff, who inserted his own name as payee, it was held that the plaintiff was entitled to recover, for, the defendant, by leaving the blank, undertook to be answerable for it when filled up in the shape of a bill. Le Blanc, J. added, that it was the same thing, as if the defendant had made the bill payable to bearer, and Bayley, J. that the issuing of the bill in blank, was an authority to a *bonâ fide* holder to insert the name. *Crutchley v. Clarance*, 2 *M. & S.* 90. So where, in another action on the same bill against the acceptor, the defendant objected that the blank was filled up without the drawer's authority, and the latter swore that it was so, but it appeared that he had passed the bill to V, who passed it to the plaintiff, and that the defendant under the eye of the drawer, and with the plaintiff's name standing in it, had accepted the bill, it was held that there was proof of the consent of the drawer, and the plaintiff recovered. *Crutchley v. Mann*, 5 *Taunt.* 529. 1 *Marsh.* 29. *S. C.* So where a bill had been issued with a blank for the payee's name, and A. B. to whom it was *bonâ fide* negotiated, inserted his own and indorsed it, Best, C. J. ruled that it might be declared on as made payable to A. B. and that no new stamp was necessary. *Attwood v. Griffin*, *Ry. & Moo.* 425. It seems that until the blank is filled up, the instrument is not properly a bill or note. *R. v. Randall*, *Bayley*, 31. *Russ. & Ry. C. C. R.* 195. *S. C.* Unless perhaps where it can be considered in legal operation as payable to the order of the drawer. *Bayley*, 31.

A note payable to J. S. omitting the words, "or order," "or bearer," is a good promissory note within the statute 9 Ann. though not negotiable. *Smith v. Kendall*, 6 *T. R.* 123. *R. v. Box*, 6 *Taunt.* 325. A bill or note payable to J. S. or bearer is payable to the bearer, and negotiable by delivery, and in the latter case J. S. is a mere cypher. *Bayley*, 25. So a note payable, "to ship Fortune or bearer," is negotiable. *Grant v. Vaughan*, 3 *Burr.* 1516.

Where there is a mistake in the name of the payee, evidence may be given to show who was the party intended. *Willis v. Barrett*, 2 *Stark.* 29. And if a person of the same name as the payee indorse a bill, the acceptor may prove that fact in his defence. *Mead v. Young*, 4 *T. R.* 28. *diss. Ld. Kenyon.* Where a note was made payable to H. S. and it appeared that there were two persons of that name, father and son: Bayley, J. ruled that the note was evidence of a promise to the father, but it appearing that the son had given directions to bring the action, and was in possession of the note, he thought this sufficient to maintain the declaration, which stated the note to have been made payable to the son. *Sweeting v. Fowler*, 1 *Stark.* 106.

Where a bill or note is made payable to A. to the use of B., A.

has the right to sue upon and transfer the bill. *Evans v. Cramlington, Carth.* 5. 2 *Vent.* 307. *S. C.* 1 *B. & P.* 101. (*n*). *but see Sigourney v. Lloyd,* 8 *B. & C.* 631. When a married woman is payee the interest vests in her husband. *See post, Chap.* III.

Where a bill or note is made payable to the order of a fictitious person, and is issued with an indorsement purporting to be by that person, the holder of the bill may treat it as against the drawer, acceptor, or maker (cognizant of the fact of the indorsement being fictitious), as a bill or note payable to bearer, or may recover on a special count stating the circumstances. In *Vere v. Lewis,* 3 *T. R.* 182, three of the judges were of opinion that the plaintiff might declare on such a bill, against the acceptor, as payable to bearer. In *Minet v. Gibson,* 3 *T. R.* 481, the declaration on a similar bill contained several counts stating the special circumstances, and also treating the bill as payable to the order of the drawer, and payable to bearer, and the court of B. K. held that the plaintiff was entitled to recover. This case was subsequently carried to the House of Lords, 1 *H. Bl.* 569., when (two of the judges and the Lord Chancellor *dis.*) the judgment of the King's Bench was affirmed, and according to the opinion of some of the judges the bill might have been treated as drawn payable to the drawer's own order. In *Collis v. Emet,* 1 *H. Bl.* 312, which was decided after *Minet v. Gibson,* in K. B., but before the affirmance of that case in the House of Lords, the Court of Common Pleas held that the holder might recover upon such a bill against the drawer, as upon a bill payable to bearer, and Lord Loughborough stated that the count setting out the whole transaction would, had the facts been correctly stated, have been sufficient. In order that the bill may operate against the acceptor as a bill payable to bearer, it must be shewn that the circumstance that the payee was a fictitious person was known to him. *Bennett v. Farnell,* 1 *Campb.* 130. 180. *c.* To prove either that the acceptor at the time of his acceptance knew the name of the payee to be fictitious, or that he had given an authority to the drawer to draw the bill in question, by having given a general authority to the drawer to draw bills on him payable to fictitious persons, evidence is admissible of irregular and suspicious transactions and circumstances, relating to other bills drawn by the drawer on the acceptor, payable to fictitious persons, and accepted by the acceptor, though none of those transactions or circumstances have any apparent relation to the bill in question, and though none of them proved that the acceptor accepted any of those other bills with a knowledge that the payees mentioned in them were fictitious. *Gibson v. Hunter,* 2 *H. Bl.* 288.

Date.] In general a bill or note is dated on the day on which it is issued, but where no date is stated the date will be com-

puted from the day of the drawing. *De la Courtier v. Bellamy*, 2 *Show.* 422. *Hague v. French*, 3 *B. & P.* 173. *Giles v. Bourne*, 6 *M. & S.* 73. 2 *Chitty*, 300. *S. C.* The date of a bill or note is not, as between third parties, even *primâ facie* evidence to shew that it had existence at that time. *Anon.* 2 *Stark. Ev.* 161. *overruling Taylor v. Kinlock*, 1 *Stark.* 175. *see* 2 *Stark.* 594. Nor will the date of a bill or note in such case afford any evidence of the time of indorsement. *Rose v. Rowcroft*, 4 *Campb.* 245. *Cowie v. Harris*, 1 *M. & M.* 141.

A bill may be post-dated, provided that with reference to the time which it has to run it be duly stamped. *Pasmore v. North*, 13 *East*, 517. Bills and notes under 5*l.* must bear date before or at the time of the drawing or issuing thereof, and not at any day subsequent thereto. 17 G. 3. c. 30. s. 1. *ante*, *p.* 5.

It is not lawful for any banker or other person to issue any promissory note for the payment of money to the bearer on demand, liable to any of the duties imposed by 55 G. 3. c. 184. with the date printed thereon, under a penalty of 50*l.* 55 G. 3. c. 184. s. 18.

A mere mistake in the date of a bill may be corrected without a new stamp. Thus where a bill was delivered to an agent of the drawer and acceptor to be given to the indorsee, and he, discovering that the date was 1822 instead of 1823, altered the 2 to 3, Abbott, C. J. left it to the jury to say whether the bill was not dated by mistake, and if so, he ruled that the alteration did not vacate the bill. *Brutt v. Picard*, *R. & M.* 38. *and see post*, *p.* 40.

Sum payable.] In general the sum payable is both superscribed, and mentioned in the body of the bill or note; if the the sum is imperfectly stated in the body, but correctly in the margin, the body will be taken to refer to the margin. *Elliot's case*, 2 *East*, *P. C.* 951.

If the sum in the superscription of the bill is different from that in the body, the latter will be taken *primâ facie* to be the sum payable. *Beawes*, *pl.* 193. *Mar.* 138, 9. 2d *Ed.*

Bills and notes under 20 shillings are prohibited by statute 48 G. 3. c. 88. *ante*, *p.* 4, and under 5*l.* are regulated by stat. 17 G 3. c. 30. *ante*, *p.* 5. 7 Geo. 4. c. 6. *ante*, *p.* 6.

Time and place of payment.] It is not necessary that any specific time of payment should be mentioned in a bill or note, though, as before stated, the time of payment must not be made contingent; *ante*, *p.* 13. If no time is mentioned in the bill or note, it is payable in law on demand. *Whitlock v. Underwood*, 2 *B. & C.* 157. If a bill of exchange be made

payable at never so distant a day, if it is a day which must come, it is good. *Per Willes, C. J. Colehan v. Cooke, Willes*, 396. But by 17 Geo. 3. c. 30. bills and drafts under 5*l.* must be payable within 21 days after date, *ante, p.* 5; *and see* 7 *G.* 4. *c.* 6. *ante p.* 6. Checks upon bankers do not in general express the time at which they are to be paid, and are therefore payable immediately. *Down v. Halling*, 4 *B. & C.* 333. *ante, p.* 9.

With regard to the *place* of payment, *a bill* may be drawn payable (in the body of the bill) at a particular place, or in the direction to the drawee, as "To Mr. A. B. payable in London," and it has been held in both cases, that the qualification as to the place of payment is part of the contract. *Hodge v. Fillis*, 3 *Campb.* 463. *Roche v. Campbell*, 3 *Camp.* 247. *Bayley*, 310. But where a bill thus drawn is accepted generally, or accepted at a particular place, omitting the words "only" or "and not otherwise or elsewhere" the qualification as to the place of payment will not be extended to the acceptance, and such acceptance will be construed to be a general acceptance under 1 *&* 2 *G.* 4. *c.* 78. *Selby v. Eden*, 3 *Bingh.* 611. *Fayle v. Bird*, 6 *B. & C.* 531. *See post.*

With regard to the *place* of payment *a note* may be made payable, (in the body of the note) at a particular place, and the place of payment will form part of the contract. *Roche v. Campbell*, 3 *Campb.* 247. *Saunderson v. Bowes*, 14 *East*, 500. But where the qualification as to the place of payment is written, not in the body of the note, but, by way of memorandum at the foot, it has been held to form no part of the contract; and that to state such a note as payable at a particular place is a variance. *Exon v. Russell*, 4 *M. & S.* 505. *Price v. Mitchell*, 4 *Campb.* 200. However, in an action against the maker of a note, who had written upon it "payable at No. 32, Castle Street," when it was averred that the defendant made the note, &c., and that he then and there (not saying thereby) made it payable at No. 32, Castle Street; Abbott, J. held that the memorandum supported the statement in the declaration, and the plaintiff had a verdict; *Hardy v. Woodroffe*, 2 *Stark.* 319; and the same point was ruled by him in *Sproule v. Legg*, 3 *Stark.* 156. So when the memorandum at the foot of the note *was printed*, Lord Ellenborough ruled, that it was part of the contract. *Trecothick v. Edwin*, 1 *Stark.* 468.

As to specifying the place of payment of notes payable on demand under 20*l.* see 7 G. 4. c. 6. s. 10., and of bills and notes drawn by banking establishments, exceeding six in number, 65 miles from London; see 7 G. 4. c. 6. s. 1. *ante, p.* 6, *and Appendix, No.* 3.

Payable to order] It is not, as already stated, *ante, p.* 23,

essential to the character of a bill or note, that it should be made payable to order. *Smith v. Kendall*, 6 *T. R.* 123. But in order to make a bill or note negotiable, it must be payable to a certain person *or order*, or to a certain person *or bearer*, or *to bearer* generally. Where the words "or order" have clearly been omitted by mistake, they may be inserted at any time without a new stamp. *Kershaw v. Cox*, 3 *Esp.* 246. *Knill v. Williams*, 10 *East*, 437. *and see post*, *p.* 39. (*Note* 6).

Value received.] The words "value received" are not material to be inserted in a bill or note; *White v. Ledwich*, *Bayley*, 34. *Popplewell v. Wilson*, 1 *Str.* 264; and if inserted in the bill or note it is no variance to omit them in the declaration. *Per Ld. Ellenborough*, *Grant v. Da Costa*, 3 *M. & S.* 35. So where the consideration of a bill or note appears on the face of it, is not necessary to state it in the declaration. *Coombs v. Ingrum*, 4 *D. & R.* 211. Where a bill is drawn payable to the order of a third person "for value received," it is not a variance to state in the declaration that it was for value received *by the drawer*. *Grant v. Da Costa*, 3 *M. & S.* 351. But where a bill is drawn payable to the drawer's own order "for value received" it means value received by the drawee from the drawer. *Highmore v. Primrose*, 5 *M. & S.* 65. *Priddy v. Henbrey*, 1 *B. & C.* 675. So "value received," in a note, imports "value received from the payee." *Clayton v. Gosling*, 5 *B. & C.* 360. If the words "value received" appear on the face of a note, an action of *debt* may be maintained against the maker by the payee. *Bishop v. Young*, 2 *B. & P.* 78. So if those words appear on a bill of exchange payable to the order of the drawer, debt may be supported by the drawer, against the acceptor. *Priddy v. Henbrey*, 1 *B. & C.* 674. 3 *D. & R.* 165. *S. C.* Coal notes should be expressed to be for value received in coals; *see ante*, *p.* 10.

When a promissory note originally expressed to be "for value received" generally, was altered the next day on the suggestion of one of the parties, by adding the words "*for the good will of the lease and trade of Mr. E. K. deceased*," it was held to require a new stamp, such words being material as evidence of a fact, and not having been originally intended to be inserted, nor omitted by mistake. *Knill v. Williams*, 10 *East*, 431. It is no variance to state a note "for value received in Mrs. L's estate" as a note "for value received" generally. *Bond v. Stockdale*, 7 *D. & R.* 140.

Stamp.] The stamps with regard to bills of exchange and promissory notes are regulated by the statute 55 Geo. 3. c. 184. (*see Appendix*, *No.* 6.) which (*sec.* 8.) contains a clause referring to and embodying all the powers, provisions, clauses,

regulations, directions, fines, forfeitures, pains and penalties, contained in and imposed by the several prior acts of parliament relating to the stamp duties. As to the stamp on banker's notes under 5*l.* see 7 Geo. 4. c. 6. *ante, p.* 6. and *Appendix, No.* 3. Bankers' bills and notes above 5*l.* may be issued unstamped on paying a composition, by 9 Geo. 4. c. 23. (*See Appendix, No.* 5.)

A promissory note for 40*l.* payable to bearer *generally*, and therefore in law payable on demand, is within the first class of promissory notes, in schedule, part 1, 55 G. 3. c. 184. and requires a 5*s.* stamp. *Whitlock v. Underwood*, 2 *B. & C.* 157. And a note for 11*l.* payable to *A. B. on demand*, is also within the first class of promissory notes mentioned in the statute, schedule part 1. and requires a stamp of two shillings. *Keates v. Whel-don*, 8 *B. & C.* 7.

A bill payable to the drawer's own order and taken up by him, when due, and re-issued, does not require a fresh stamp, for it is not a new bill. *Callow v. Lawrence*, 3 *M. & S.* 95.

Stamp — penalties.] The party making, signing or issuing an unstamped bill or note, or causing it to be made, signed or issued, or accepting or paying it, or causing or permitting it to be accepted or paid, will be liable to a penalty of 50*l.*, 55 G. 3. c. 184. s. 11. (*See Appendix, No.* 6.)

Negociating, circulating, or offering, or taking in payment notes payable to the bearer on demand, made or purporting to be made out of Great Britain, or purporting to be made by, or on behalf of any person residing out of Great Britain (excepting when made and payable in Great Britain only,) unless it be stamped in like manner as a note of the same tenor and value made in Great Britain, subjects the party to a penalty of 20*l.* 55 G. 3. c. 184. s. 29.

Stamp — stamping after the making.] A bill or note made in Great Britain must be stamped with the stamp appropriated by law, and it cannot be stamped *after* it is written, 31 Geo. 3. c. 25. s. 19. *See Butts v. Swann*, 2 *B. & B.* 84. 88. *Green v. Davies*, 4 *B. & C.* 242. The last stamp act, 55 G. 3. c. 184. does not contain this clause, but by sec. 8. all powers, provisions, clauses, regulations and directions relating to former duties are extended to the duties by that act imposed. The 34 G. 3. c. 32. authorising the commissioners to stamp bills, &c. after they were drawn, on payment of a certain penalty, has expired. *Bayley*, 61. Although a bill cannot lawfully be stamped after it is made, yet if it be in fact subsequently stamped by the commissioners, and there is nothing *on the face of it* to show that it was subsequently stamped, or, that the indorsee took it before it was stamped, and it is in the hands of a *bonâ fide* indor-

see, the objection that it was not stamped at the time when it was drawn will not prevent the indorsee from recovering upon it. *Wright v. Riley, Peake*, 173. 4 *B. & C.* 242. But where a note which ought to have been stamped with a 3*s.* stamp, was stamped with a three-penny receipt stamp, and a 1*l.* agreement stamp, and there was indorsed upon it a receipt for a penalty of 5*l.* and 1*l.* duty, it was held, that as it appeared upon the face of the note, that it had been issued without a stamp equal in amount to that required by law, the commissioners had no power after it had been issued to affix to it another stamp, and that, therefore, it was not receivable in evidence, either in support of a count on the note, or of the money counts. The court distinguished the case from that of *Wright v. Riley*, in which there was nothing on the face of the bill, to shew that it was not stamped when it issued, and it was in the hands of an indorsee, who might have taken it after it was stamped; whereas in the present case, the action was brought by the executrix of the payee, against the maker. *Green v. Davies*, 4 *B. & C.* 235. *See also Roderick v. Hovil*, 3 *Campb.* 103. *R. v. Chipping Norton*, 5 *B. & A.* 412.

Stamp — foreign bills.] The stamp acts do not extend to foreign bills, therefore a bill of exchange drawn in Ireland on an Irish stamp, does not require an English stamp; and where partners, resident in Ireland, signed and indorsed as drawers and payees, a copper-plate impression of a bill of exchange, leaving blanks for the date, sum, time when payable, and the name of drawee, and transmitted it to B in England for his own use, who filled up the blanks and negotiated it, it was held that this was to be considered a bill of exchange, by relation from the time of signing and indorsing in Ireland, and that consequently an English stamp was not necessary. *Snaith v. Mingay*, 1 *M. & S.* 87. So where a bill was drawn in Jamaica, on a stamp of that island, but a blank was left for the name of the payee, which was inserted in England, it was held that an English stamp was not necessary. *Crutchley v. Mann*, 5 *Taunt.* 529. 1 *Mar.* 29. *S. C. ante, p.* 23. So also, where the body of a bill was written in England, and accepted here, and was transmitted to a person in Antwerp, who signed it as drawer, Dallas, C. J. ruled that an English stamp was not required, since the bill was actually drawn abroad. *Boehm v. Campbell, Gow*, 56. Though a bill be dated abroad, yet it is competent to the acceptor, to prove that, in fact, it was drawn here, and that it is therefore void for want of a stamp. *Jordaine v. Lashbrooke*, 7 *T. R.* 601. Where in an action on a bill dated *Paris*, the defence was, that it had been drawn in London, and it was proved that the drawer was in London, on the 3d March, at 11 o'clock, a. m., the bill being dated the 1st March, Lord Ellenborough said, "It is not very pro-

bable that this bill was drawn in Paris, 1st March, but if it were proved, ever so distinctly, that it was not drawn in Paris, 1st March, it would not follow that it was not drawn there at some other time, or that it was drawn in England. Drawing here with a foreign date to evade the stamp duties is a very serious offence, and the fact must be made out by distinct evidence." *Abraham v. Dubois, Bayley*, 67. 4 *Campb.* 269. *See Bire v. Moreau*, 2 *C. & P.* 376.

Where a note was made in *Jamaica*, but not stamped according to the laws of that island, it was held that it could not be received in evidence in our courts, and Lord Kenyon observed, "It is said that we cannot take notice of the revenue laws of a foreign country, but I think we must resort to the laws of the country in which the note was made, and unless it be good there, it is not obligatory in a court of law here." *Alves v. Hodgson*, 7 *T. R.* 241. 2 *Esp.* 528. *S. C.* But where certain receipts given in *France* were offered in evidence, but objected to as inadmissible, being unstamped, and the defendant's counsel offered to show that by the law of France such receipts required a stamp, Abbott, C. J. refused to admit such evidence, on the ground that the courts of this country will not take notice of the revenue laws of a foreign state, and, on an application for a new trial, the court of K. B. coincided in this opinion. *James v. Catherwood*, 3 *D. & R.* (*See Note* 7.)

Stamp — bills and notes bearing interest.] A bill or note bearing interest does not require a larger stamp than if it did not bear interest. Thus, where a note at three months, bearing interest from the date, for 30*l.*, was stamped with a stamp applicable to a 30*l.* note, it was contended that the interest ought to be added to the 30*l.* and that a stamp applicable to a note for a greater sum than 30*l* was requisite; but the court held that the note was properly stamped, the words "sum of money" meaning the principal sum mentioned in the note, and not a sum compounded of principal and interest. *Pruessing v. Ing*, 4 *B. & A.* 204.

Stamp—date and sight.] The word "date" in the stamp act denotes the period of payment on the face of the bill itself. Therefore where a bill of exchange was originally drawn on 21st December, payable two months after date, and it was agreed between the holder and the drawee that the date should be altered from the 21st to the 31st, which was done; in an action by the holder against the acceptor, it was held sufficient that the bill was stamped with a stamp appropriated to bills not exceeding two months after date. *Upstone v. Marchant*, 2 *B. & C.* 10. 3 *D. & R.* 198. *S. C. Peacock v. Murrell*, 2 *Stark.* 558. But bills payable after sight do not run from the day of the date; but from the day when they are presented

for sight, and therefore, a note payable two months *after sight*, is a note payable more than two months after date, and requires a stamp of 8*s.* 6*d.* *Sturdy v. Henderson*, 4 *B. & A.* 592. A bill payable at sight is not a bill payable *on demand*, so as to come within the exception in the stamp act of 23 Geo. 3. c. 49. s. 4. *J'Anson v. Thomas*, *B. R. T.* 24 *Geo.* 3. *Bayley*, 79.

Stamp—Order for payment of money out of a fund which may or may not be available]. It was the object of the legislature in framing this provision (*see* 55 *Geo.* 3. *c.* 184. *Sch. part* 1. *Appendix, No.* 6.) to treat as promissory notes and bills of exchange, and to subject to stamp duty such instruments as, being payable on a contingency, or out of a particular fund, could not in strictness fall under that denomination. *Per Lord Ellenborough, Firbank v. Bell*, 1 *B. & A.* 36. *and see Jones v. Simpson*, 2 *B. & C.* 321. In order to prove the payment of money pursuant to order, the following letter was given in evidence: "Messrs. B. & H. when the mahogany *per* Regent is sold, you will please pay over to Messrs. P. H. & W. 1500*l.* in such bills as you receive from the said sale, S. Mann." Messrs. P. H. & W. enclosed this letter in another, addressed by them to B. & H. and B. & H. in reply, wrote promising to pay over the money. The letter from P. H. & W. was stamped with an agreement stamp, but it was objected that the letter from Mann was an order for payment of money out of a fund which may or may not be available, and that it ought to have been stamped accordingly, and of this opinion was the court. *Firbank v. Bell*, 1 *B. & A.* 36. F. & Co. wrote to S. & Co. the following letter; "We request you will pay to Messrs. H. & Son or their order, out of the first proceeds that become due of our stock of gunpowder now in your charge, 600*l.* and charge the same to our account." S. & Co. in answer stated, that they had no objection to pay as directed, provided they were in funds for that purpose, and subject to the payment of their advances; and other letters passed on the subject. The two first letters were stamped with an agreement stamp on payment of a penalty. It was held that this case fell within the authority of *Firbank v. Bell*, and that the first letter was not admissible, not having been stamped at the time when it was written. *Butts v. Swan*, 2 *B. & B.* 78. 4 *B. Moore*, 484. *S. C.* But in order to come within this clause, the instrument should be for the payment of a specified sum, and therefore, where A. having consigned goods to B., sent him the following order; "Pay to A. B. the proceeds of a shipment of twelve bales of goods, value about 2000*l.*, consigned by me to you," and B. by writing consented to pay over the full amount of the net proceeds of the goods, it was held that neither of these instruments came within the above clause. *Jones v. Simpson*, 2 *B. & C.* 318.

Stamp — bankers' drafts]. The clause exempting drafts or orders for the payment of money on demand, upon any banker or person acting as a banker, within ten miles of the abode of the person drawing the draft, (*see* 9 *Geo.* 4. *c.* 49. *s.* 15. *post*,) only extends to persons who are bankers, and therefore an order directed to "Mr. Castleman, Bricklayer," was held to require a stamp. *Castleman v. Ray*, 2 *B. & P.* 383. A draft or order on a banker, if post-dated, requires a stamp; the exemption only extends to drafts bearing date on or before the day on which the same shall be issued. *Allen v. Reeves*, 1 *East*, 435. *Whitwell v. Burnett*, 3 *B. & P.* 559. *Martin v. Morgan*, 3 *B. Moore*, 635. The place at which the draft or order is issued must be specified in it. Therefore, where a person residing at his country seat called Trimsaran, about four miles from Llanelly, drew a draft upon his bankers who resided at Llanelly, and dated it "Llanelly," the draft was held void, and not admissible in evidence. *Waters v. Brogden*, 1 *Y. & J.* 457. Where the defendants knowing a check to be post-dated, and therefore void, and that the drawers were insolvent, presented it for payment to the bankers on whom it was drawn, who, without knowledge of these facts, paid the amount, though they had no funds of the drawer's in their hands at the time, but expected some in the course of the day; it was held that the bankers were entitled to recover the money back in an action for money had and received. *Martin v. Morgan*, 3 *B. Moore*, 635. *Gow*, 123. *S. C.*

By stat. 9 Geo. 4. c. 49. s. 15., from and after the passing of that act, all drafts or orders for the payment of any sum of money to the bearer on demand, and drawn in any part of Great Britain, upon any banker or bankers, or any person or persons acting as a banker, who shall reside or transact the business of a banker within fifteen miles of the place where such drafts or orders shall be issued, shall be and the same are thereby exempted from any stamp duty imposed by any act or acts in force immediately before the passing of that act, any thing in such act or acts to the contrary notwithstanding, provided the place where such drafts or orders shall be issued shall be specified therein; and provided the same shall bear date on or before the day on which the same shall be issued; and provided the same do not direct the payment to be made by bills or promissory notes.

Stamp—consequences of want of stamp]. Where a bill or note is not stamped pursuant to the statute, it is void and cannot be given in evidence. *See Butts v. Swan*, 2 *B. & B.* 88. *Green v. Davies*, 4 *B. & C.* 242. Consequently, whenever an action is brought on a bill or note which is not properly stamped, and the title of the plaintiff depends entirely upon the bill or note, he cannot recover; but where a bill or note

not properly stamped has been given in payment of a prior demand, the plaintiff, on failing to prove his demand on the bill or note by reason of its being improperly stamped, may, if his declaration contain the proper counts, resort to the original consideration. *Alves v. Hodgson*, 7 *T. R.* 241. *Tyte v. Jones*, 1 *East*, 58. (*n*). *Wilson v. Kennedy*, 1 *Esp.* 244. *post*, *Chap.* XI. And it will not prevent the plaintiff from recovering on the original consideration that he has neglected to present the unstamped bill for payment, and that if presented it would have been paid. *Wilson v. Vysar*, 4 *Taunt.* 288. *Ruff v. Webb*, 1 *Esp.* 129. *See also Swears v. Wells*, 1 *Esp.* 317.

Forging a bill or note on unstamped paper, or uttering such bill or note with knowledge of its being forged, and with intent to defraud, is as much an offence as if the bill or note were on paper duly stamped. *R. v Hawkeswood*, *Pasch.* 1783. *Bayley*, 63. *And see post*, *Chap.* XVI.

Though a bill or note, if unstamped, cannot be given in evidence, yet it may be inspected for a collateral purpose. Thus where in an action for money lent, the defence was, that the defendant was drunk at the time and had been imposed on by the plaintiff, an unstamped note for the amount was produced by the plaintiff; *and per Lord Ellenborough*, "The note certainly cannot be received as a security, or to prove the loan of the money; but I think it may be looked at by the jury as a cotemporary writing to prove or disprove the fraud imputed by the plaintiffs." The jury having inspected the note found for the defendant. *Gregory v. Frazier*, 3 *Campb.* 454. *and see R. v. Pendleton*, 15 *East*, 449. *R. v. Bathwick*, 4 *D. & R.* 335. *Reed v. Deere*, 7 *B. & C.* 261. Where a promissory was avoided by a material alteration, but on its being presented to the maker, the latter acknowledged his hand, and promised to send the plaintiff (the payee) his money; it was held that the plaintiff was entitled to recover the amount of the note on the account stated. *Bishop v. Chambre*, 1 *Danson & Lloyd*, 83. *Sutton v. Toomer*, 7 *B. & C.* 416; *post*, 34.

Stamp—different denomination.] By the last stamp act (*see Appendix*, *No.* 6.) it is enacted that all instruments for or upon which any stamp or stamps shall have been used of an improper denomination or rate of duty, but of equal or of greater value in the whole with or than the stamp or stamps which ought regularly to have been used thereon, shall nevertheless be deemed valid and effectual in the law; except in cases where the stamp or stamps used on such instruments shall have been specially appropriated to any other instrument, by having its name on the face thereof. 55 *G.* 3. *c.* 184. *s.* 10. *See Taylor v. Hague*, 2 *East*, 414.

Stamp—reissuing bills.] Where a bill payable to the order of the drawer is taken up by him, and after payment reissued, it is not a new bill, and therefore a new stamp is unnecessary. *Callow v. Lawrence*, 3 *M. & S.* 95. *and see Beck v. Robley*, 1 *H. B.* 89. *(a) post.*

Alteration.] An alteration in a bill or note in a material part will render it void, unless such alteration be merely the correction of a mistake. If the alteration was made without the consent of the party who wishes to take advantage of it, the instrument is void as against him, at common law, whether it was made before or after the issuing of the bill or note. If it was made after the bill or note has been negotiated, it is void under the stamp laws, whether the parties consented or not; but if the alteration was made with the consent of the parties and before the bill was negotiated, it will not render the instrument void.

Where the alteration is so material as to vacate the instrument, it will have the effect, though made by a mere stranger. *Master v. Miller*, 4 *T. R.* 320. *in error* 2 *H. B.* 141. 1 *Anstr.* 225. *S. C.*

Where money had been lent and a promissory note properly stamped given for the amount, and the note was afterwards avoided by an alteration, it was held that the lender might recover for money lent, and might give the note in evidence to prove the terms on which the money had been deposited. *Sutton v. Toomer*, 7 *B. & C.* 416. *See ante, p.* 33.

Alteration—after negotiation avoids a bill, though made with consent.] By stat. 1 Ann. stat. 2. c. 22. s. 2 & 3, which is still in force, see 55 G. 3. c. 184. s. 8. *ante, p.* 27. *Battie v. Taylor*, 15 *East*, 416, there shall be no alteration in a stamped instrument after it has been used for one purpose. By the negotiation of a bill it is used, and therefore any subsequent material alteration avoids it. A bill of nine months after date was by consent of all parties, a fortnight after it had been delivered to the payee, altered to ten months after date. Lord Kenyon held a new stamp necessary, and nonsuited the plaintiff. *Wilson v. Justice*, 1796, *Bayley*, 89. A promissory note by which the maker promised nine months after date to pay to the plaintiff or order 100*l.* for value received, was altered the day after it had been delivered to the payee, by inserting, with the consent of both parties, after the words *value received*, the words *for the good will of the lease and trade of Mr. F. K.* deceased; this alteration was held to be material, and to avoid the note, for it was evidence of a fact, which, if necessary to be inquired into, must otherwise have been proved by different evidence. *Knill v. Williams*, 10 *East*, 431.

After a bill had been drawn and indorsed by the drawers to whose order it was payable, it was left for acceptance at the drawees. It was then dated the 5th of March; without the consent of the drawers, the drawees altered the date to the 15th, and then accepted it. *Per Lord Ellenborough*, "Before acceptance the bill was a perfect instrument, upon which the drawers might have been sued. Any material alteration of it therefore in that state rendered it void. It is impossible to say that postponing the time of payment is always advantageous to the parties liable on the bill. Without my knowing it, I may thus be out of England at the time when a bill I draw becomes payable and is dishonoured, and thus, having made no provision for it, from the belief that it was duly honoured some time before, this postponement may cause the ruin of my credit. *Besides, consent would not justify the alteration with a view to the stamp laws, after the bill had been negotiated.*" *Outhwaite v. Luntley*, 4 *Campb.* 179. In an action by the payee against the acceptor of a bill, it appeared that the drawer had given the bill to the plaintiff, the payee, for goods sold. When carried by the plaintiff's agent to the defendant to be accepted, the latter begged that the date might be altered, which was done by the plaintiff's agent, and the defendant then accepted it. No communication took place with the drawer. *Per Lord Ellenborough*, "Upon the stamp laws I think the bill is void. It was an existing valid instrument before the acceptance. It was negotiated when delivered by the drawer to the plaintiff. The plaintiff, as payee, had acquired an absolute interest in it, and might have maintained an action on it against the drawer. As to the drawer, it was before then a perfect instrument. Nor was there any mistake to be rectified. When drawn on the 5th of July, it corresponded with the intentions both of drawer and payee. In the case cited, (*Paton v. Winter*, 1 *Taunt.* 420.) the objection on the stamp laws is stated not to have been taken, although that was the only objection that could be taken with any effect. The case therefore decides nothing, and was hardly worth reporting. Here, when the date was altered, a new bill was drawn, and that could not be done without a new stamp." *Walton v. Hastings*, 4 *Campb.* 223. 1 *Stark.* 215. *S. C.*

Where there was a doubt from the appearance of a note, whether or not the date (May 17) was genuine, Lord Tenterden said that it was a question for the Jury, whether or no the word *May* was in a different writing from the rest of the note, and whether the note had been altered after it was made and delivered by the defendant, and so had become a perfect instrument; that it certainly lay on the plaintiff to account for the suspicious form and obvious alteration of the note. They were to judge from inspection of the instrument, and if they thought the alteration was made after its completion, the

verdict must be for the defendant. The jury immediately found for the defendant. *Bishop v. Chambre*, 1 *M. & M.* 116; *and see Johnson v. the Duke of Marlborough*, 2 *Stark.* 313.

Alteration—before negotiation with consent of parties does not avoid bill.] Where an alteration is made in a bill or note before it has been issued, such bill or note is good against all who have consented to the alteration, provided it be not made after the time when the operation of the bill is spent. Thus where three persons joined as drawer, acceptor, and indorser of an accommodation bill, which was afterwards issued for value to one Howell, but previously to its being so issued the date was altered with the consent of the acceptor, but without the consent of the drawer and indorser, it was held that the acceptor was not discharged by this alteration, for that until it was issued to Howell, no person could have sued upon it. *Per Holroyd, J.* "Independently of the Stamp Act, it is clear that the acceptor would be liable; for when he assented to the alteration, it is as if his acceptance had been originally made subsequently to that alteration, for his assent operates as a parol acceptance of the bill. As to the other point, I am of opinion that a fresh stamp was not necessary, because no one could have maintained an action upon the bill until it came into the hands of Howell." *Downes v. Richardson*, 5 *B. & A.* 674. *And see Johnson v. Gibb*, 2 *Chitty*, 123. *Sherrington v. Jermyn*, 3 *C. & P.* 374. These decisions appear to have overruled the case of *Calvert v. Roberts*, 3 *Campb.* 343. There the defendant had accepted the bill for the accommodation of the drawer, who, after attempting to negotiate it, but failing, altered the date and indorsed it away; Lord Ellenborough said "that the bill, as originally dated, was a valid and complete instrument, framed according to the intention of the parties. Therefore the date could not afterwards be altered, even with their consent. The alteration was tantamount to the drawing of a new bill." It does not appear whether the alteration was made with the defendant's consent. Where a creditor drew upon his debtor, for the amount of his bill, and sent it to him for acceptance, who wished to have the time altered from three to four months, which with the drawer's assent was done, Lord Ellenborough held that a new stamp was unnecessary. *Kennerly v. Nash*, 1 *Stark.* 452. *Johnson v. Garnett*, 2 *Chitty*, 122. Though a bill or note may be altered before negotiation by consent, and does not require a new stamp, yet if the alteration be made after the period when the bill, if not altered, would have become due, a new stamp is required. A bill dated 2d September 1723, payable twenty-one days after date, while it continued in the hands of the drawer, was altered with the consent of the acceptor to fifty-one days after date, and with like consent was again restored to twenty-one days

after date, and the date was brought forward from the 2d to the 14th September. This alteration being made on the 30th September, the court were of opinion that as, at the time when the last alteration was made, the operation of the bill as it originally stood was quite spent, it was a new and distinct transaction between the parties, and that therefore there ought to have been a new stamp. *Bowman v. Nichol*, 5 *T. R.* 537.

Alteration—what is an issuing of a bill or note]. A bill is issued as soon as there is some person who can make a valid claim on it, but if it remains in the hands of the original drawer, even with names upon it, under such circumstances as that he cannot have any legal claim upon those persons, the bill is not issued. *Per Bayley J., Downes v. Richardson*, 5 *B. & A.* 680. *ante p.* 36. In the following case, Lord Ellenborough seems to have been of opinion that a bill drawn for a valuable consideration as between the drawer and payee, was not to be considered as negotiated while in the hands of the payee. Myers agreed to let to Michael Hart a house at Portsea, and M. Hart drew the bill in question in favour of Myers, in consideration of the good will and fixtures. Myers then took the bill to Joseph Hart, the drawee and defendant, at whose desire he altered the date of the bill. It appeared, also, that while the bill was in the hands of Myers, a special acceptance was inserted. *Per Lord Ellenborough*, "A bill of exchange is certainly capable of alteration before it has passed into a state of negotiation, particularly if the alteration be made for the correction of a mistake as it was here, and made with the acquiescence of the party. With respect to the alteration made as to the place of payment, the objection rests upon the *vexata quæstio*, whether the place of payment is to be considered as part of the contract, or merely direction where payment may be made (*see Mackintosh v. Haydon, post*). I am of opinion that the objections are without foundation." *Jacobs v. Hart*, 2 *Stark.* 45. *But see Walton v. Hastings*, 4 *Campb.* 223. 2 *Chitty*, 121. *S. C. Wilson v. Justice, Bayley*, 89. *ante, p.* 34. An exchange of acceptances is a negotiation of the respective bills, and they cannot after such exchange be altered even with consent, without a new stamp. The delivery of the bill by the drawer to the acceptor and the re-delivery of it to the drawer for a valuable consideration, (as the exchange of acceptances) constitutes a negotiation. The several drawers are mutual purchasers of each other's acceptances. *Cardwell v. Martin*, 9 *East*, 190. 1 *Campb.* 79. *S. C.* Where a creditor draws upon his debtor, who accepts the bill and re-delivers it to the drawer, the bill is then negotiated and cannot be altered without a new stamp. *Bathe v. Taylor*, 15 *East*, 412.

Alteration—what alteration is material]. In order to render a bill or note void by alteration, the alteration must be in a material point. Altering the date of a bill payable after date is a material alteration. *Walton v. Hastings*, 4 *Campb.* 223. 1 *Stark.* 215. *S. C. Outhwaite v. Luntley*, 4 *Campb.* 179. So the addition of the consideration of the bill. *Knill v. Williams*, 10 *East*, 401. *ante*, *p.* 34. An alteration in the acceptance, as converting a general acceptance into an acceptance making the bill payable at a particular place, is material. Thus, where the drawer of a bill, without the consent of the acceptor, who had accepted generally, inserted under the acceptance the words "payable at Mr. B.'s, 48 Chiswell Street," the court held that as those words rendered the acceptance special, (*Rowe v. Young*, 2 *B. & B.* 165. *post*, *Chap.* VIII.) the addition was an alteration in a material part of the instrument, and having been made without the privity of the acceptor, the bill thereby became void. *Cowie v. Halsall*, 4 *B. & A.* 197. And even since the passing the stat. 1 & 2 Geo. 4. c. 78. it has been ruled that the insertion of the words "payable at Messrs. R. & Co. bankers, London;" under the acceptance, by the drawer, without the consent of the acceptor, avoids the bill, although the acceptance still continues a general acceptance. *Per Abbott*, *C. J.* "Here is another view in which the words added materially alter the character of the bill. Suppose the indorsee who was cognizant of such an alteration, were to pass the bill while current to another person, without communicating the fact, and he to a third; the right of the last indorsee to sue his immediate indorser, would, as the bill appears, be complete upon default made at the banker's and notice thereof; whereas in truth, the acceptor not having in reality undertaken to pay there would have committed no default by such non-payment. I am of opinion, therefore, that the alteration is in a material part of the bill, and that the defendant (the acceptor) is in consequence discharged." *Mackintosh v. Haydon*, *R. & M.* 362. *See Marson v. Petit*, 1 *Campb.* 82. 1 *M. & S.* 737. So where the drawer of a bill, accepted payable at B. & Co's. erased the name of B. & Co. who had failed, and substituted E. & Co. without the consent of the acceptor, it was held by the court of K. B. (which at that time treated such an acceptance as a general acceptance, *see post*, *Chap.* VIII.) that this was a material alteration, and that the acceptor was discharged. *Tidmarsh v. Grover*, 1 *M. & S.* 735. *And see R. v. Treble*, 2 *Taunt.* 329. But where in an action against the acceptor of a bill, it appeared that after the bill had been given, the words "when due at the Cross-Keys, Blackfriars Road," were written on it, Lord Kenyon said that this was not an alteration either in the time of payment or the sum. That to make a bill of exchange void by reason of the alteration, it

should be in a material point; though it had been formerly holden that even the telling up a sum on a bill, or writing any thing upon it, would invalidate it, that strictness was now exploded, and as the alteration in the present case was not in a material part, but only pointing out where the bill was to be paid, it was not such an alteration as would invalidate the bill. *Trapp v. Spearman*, 3 *Esp.* 57. *Marson v. Petit*, 1 *Campb.* 82. (*n*). *but see ante*, *p.* 38. Where a bill was originally addressed "Messrs. Southey, Crowther & Co." but had been altered into "Messrs. Southey & Crowther," and the acceptance was signed "Southey & Crowther," and it did not appear when the alteration had been made, in an action against the acceptors, Littledale J. was of opinion that the alteration, even if made after acceptance, was not material. *Farquhar v. Southey*, *M. & M.* 14. 2 *C. & P.* 497. *S. C.*

Alteration—correction of mistake.] Where the alteration is strictly the correction of a mistake, it will not vitiate the bill, though made after negotiation. Thus in an action against the payee and indorser of a bill, it appeared that the bill bearing date the 1st August, was indorsed to K. and by K. to the plaintiffs, and on the 2nd was sent back by the plaintiffs to K. because the words "*or order*" were wanting, without which the bill was not negotiable; K. applied to the defendant, who referred him to the drawer, by whom the words "*or order*" were inserted, and the bill was returned to the plaintiffs. *Per Le Blanc J.* "It can hardly be contended that the defendant did not consent to the alteration making this a negotiable bill, as he himself indorsed it and so considered it as negotiable, but this I will leave to the jury. As to the stamp, I think no new stamp was necessary. This was not a new instrument, as in the case of *Bowman v. Nichol*, 5 *T. R.* 537. (*ante*, *p.* 37,) but merely a correction of a mistake, in furtherance of the original intention of the parties. It would be different if the alteration had been made in the date, or in the time when it was to be paid, — that would be a material part; this in my opinion is not so, and does not vitiate the bill." *Kershaw v. Cox*, 3 *Esp.* 246. In *Knill v. Williams*, 10 *East*, 437, *ante*, *p.* 34. *Le Blanc J.* said, "The opinion which I delivered in *Kershaw v. Cox*, can only be supported on the ground that the alteration then made in the bill was merely the correction of a mistake made by the drawer of it, in having omitted the words '*or order*,' which it was intended at the time should be inserted, for the alteration there made was a very material one." The principle laid down in *Kershaw v. Cox* has since been frequently acted on. J. & R. Maddocks being indebted to the plaintiff, agreed to give him a bill of exchange, to be drawn by the one and accepted by the other for the amount. Instead of a bill they

sent a promissory note made by the one and indorsed by the other, which the plaintiff immediately sent back, that it might be altered into a bill according to the agreement, which was done. It was contended that a new stamp was necessary. *Per Lord Ellenborough*, " I think the stamp impressed upon this paper is sufficient to render the instrument available in its present form. It cannot be considered as having been negotiated as a promissory note. It never was issued to third persons. It remained in the hands and under the dominion of the original parties. Every thing continued *in fieri* till after the alteration. The plaintiff instantly rejected it as a promissory note. The alteration only fulfilled the terms of the agreement, and may be treated as the correction of a mistake." *Webber v. Maddox*, 3 *Campb.* 1. A bill after it was accepted was given to a person of the name of Bennett, the agent of the drawer and acceptor, to deliver to the indorsee. Bennett discovering that the date was January 1822, instead of January 1823, without again seeing the drawer or acceptor, and before he delivered the bill to the indorsee, altered the figure 2 into 3. *Per Abbott, C. J.* " I shall leave it to the jury to decide whether this bill was not dated by mistake 1822. If they are of opinion that it was originally the intention of the parties to the bill that it should be dated 1823, and that the figure 2 was inserted by mistake, I am of opinion that this alteration will not vacate the bill." *Brutt v. Picard, R. & M.* 37.

When a note beginning " I promise," &c. was signed by Jackson, and afterwards Blackstock also signed it as a surety, Bayley J. said that if it were part of the bargain between the payee and Jackson that Blackstock should sign the note as a principal, he might sign it at any time subsequent to Jackson's signature. But if it were no part of the original bargain, and Blackstock came in upon an after-thought as a surety merely, the note would not be binding without an additional stamp. *Clark v. Blackstock, Holt*, 474. (*See Note* 8.)

The insertion of his own name by the *bonâ fide* holder of a bill drawn payable to —— or order, does not require a new stamp. *Attwood v. Griffin, R. & M.* 425. *ante, p.* 23.

CHAPTER III.

OF THE PARTIES TO BILLS AND NOTES.

In general.
Where the same persons are parties in different characters.
Agents.
- How appointed.
- Cannot depute their authority.
- Extent of authority.
- When personally responsible.

Aliens.
Bankrupts.
Corporations.
Executors and Administrators.
Infants.
Lunatics.
Married women.
Partners.
- Mode of becoming parties to bills.
- Power to bind co-partners by drawing, &c. for separate use.
  - In what cases a partner cannot bind his co-partners by pledging the credit of the firm for his separate debt.
  - In what cases a partner may bind his co-partners, by pledging the credit of the firm for his separate debt.
  - One partner cannot bind his co-partner by giving a bill or note in the partnership name, where the party receiving it knew at the time, that the other partners had given notice that they would not be bound.
- Power to bind the firm ceases on dissolution.
- One partner cannot bind his co-partner after committing an act of bankruptcy.
- Partners in particular transaction.
- Several persons not partners.

In general.] The person who makes a bill is called the drawer, the person to whom it is addressed the drawee, and

the person in whose favour it is made, the payee. If the drawee accepts the bill, he is called the acceptor. The person who makes a note, is called the maker; and the person to whom it is payable, the payee. When a bill or note is indorsed, the person indorsing it, is called the indorser, the person to whom it is indorsed, the indorsee. *Bayley*, 2. The liabilities of these parties will form the subject of the next chapter.

A person may also become a party to a bill collaterally, as by accepting it, for the honor of the drawer, on the refusal of drawee to accept, which is termed an acceptance *supra protest, see post, Chap.* VIII. So a party may pay a bill for the honor of the drawer, or of any of the indorsers. *See post, Chap.* X.

It was formerly thought, that no person who was not a merchant, could be a party to a bill, but it has been long decided, that all persons who have capacity to contract, may become parties to a bill. *Sarsfield v. Witherley*, 2 *Vent.* 292. *Carth.* 82. Nor will drawing bills for a particular purpose (not continuing it with a view to gain a profit on the exchange), constitute the party a trader within the bankrupt laws. *Hankey v. Jones, Cowp.* 745. *Richardson v. Bradshaw*, 1 *Atk.* 128. *see post, Chap.* XIV. So the accepting a bill will not deprive an attorney of his privilege of being sued by bill. *Comerford v. Price, Dougl.* 312.

In general, a party is only liable, when he has written his name on the bill. *Fenn v. Harrison*, 3 *T. R.* 761. *Siffkin v. Walker*, 2 *Campb.* 308. Thus, where a party said he guaranteed a bill as if he had indorsed it, and became bankrupt, the bill not being due until after the bankruptcy, Lord Thurlow held that it was a mere guarantee, and there could be no proof without actual indorsement. Cited *ex-parte Gardom*, 15 *Ves.* 288. So where B. handed over a negotiable note for a valuable consideration to G. not indorsing it, but gave a written acknowledgment on a separate paper, to be accountable for the note to G., and G. indorsed the note and delivered the written acknowledgment to M. for a valuable consideration, and then B. and the parties to the note, became bankrupt, the Chancellor held, that M. could not prove the note against the estate of B., the written acknowledgment not being assignable, but that he was entitled to have the amount made an item in the account between B. and G., and to stand in the place of the latter. *In the matter of Barrington*, 2 *Sch. & Lef.* 112. *See also, ex-parte Roberts*, 2 *Cox*, 171. *Ex-parte Harrison*, 2 *Cox*, 172. 2 *Bro. C. C.* 614. *S. C. Ex-parte Hustler*, 1 *Glyn & J.* 9. *post, Chap.* XIV. If the holder of a bill send it to market without indorsing his name on it, neither morality nor the laws of this country will compel him to refund

the money for which he has sold it, if he did not know at the time that it was not a good bill. If he knew the bill to be bad, it would be like sending out a counter into circulation, to impose upon the world, instead of the current coin. *Per Lord Kenyon, Fenn v. Harrison,* 3 *T. R.* 759. *Jones v. Ryde,* 1 *Marsh.* 163.

Where the same persons are parties in different characters.] Although in general there are three parties to bill of exchange, the drawer, the payee, and the drawee, yet it is not unusual for the same persons to be both the drawers and the drawees. *Ex-parte Parr,* 18 *Ves.* 69. It has been customary in such cases to declare upon the bill, treating the drawer and drawee as different persons. *Starke v. Cheesman, Carth.* 509. 1 *M. & R.* 120. *ante p.* 20. But it has lately been determined that such an instrument is a mere promissory note, and that the maker is not entitled to notice of dishonor. *Roach v. Ostler,* 1 *Mann. & Ry.* 120.

So the same person may be both the payee and second indorsee of a note, in which case he cannot maintain an action on the note against his immediate indorsee. *Bishop v. Hayward,* 4 *T. R.* 470. So where in a declaration upon a bill drawn by the plaintiffs upon one F. W. indorsed by the plaintiffs to the defendant, and re-indorsed by the defendant to the plaintiffs, there was an averment, that at the time of the drawing of the bill, and of the indorsement by the defendant to the plaintiffs, it had been agreed between them, that the name of the defendant should be indorsed upon the bill, as a security to the plaintiffs, for the due payment thereof by F. W., and that the bill was so indorsed by the defendant under such agreement, and for such purpose only; and that the plaintiffs took and received the bill in satisfaction of the debt of the said F. W., upon the faith, that the defendant would indorse the same as such security, and that the indorsement by the plaintiffs was made without any consideration, and for the purpose only of procuring the indorsement of the defendant, and making the bill negotiable; and it was also averred, that the bill was presented to F. W., and that he refused to pay, and that notice of such refusal was given to the defendant, and he thereby became liable to pay, and being liable, promised, it was held upon demurrer, that this declaration was bad, inasmuch, as if the action was founded on the bill, the plaintiff could only recover according to the custom of merchants, and by that custom the plaintiffs as indorsers and drawers, would be liable to pay the amount of the bill to the defendant; and if the action was considered as founded on the special contract, it was not maintainable, inasmuch as there was not any consideration for the defendant's indorsement *Britten v. Webb,* 2 *B. & C.* 483.

So where a bill or note is indorsed by a firm, and comes into the hands of another firm, in which one of the partners in the first firm is a partner, it cannot be enforced against the first firm, for that would be to allow a man to sue himself. *Mainwaring v. Newman*, 2 *B. & P.* 120. And where a holder of shares in a washing company, drew bills on the directors of the company for goods furnished by him and his brother, and the bills were accepted "for the directors of the company," by the secretary, who had authority to accept bills drawn by the holder's brother, in an action by the holder against the company, it was held that the plaintiff was not entitled to recover. *Neale v. Turton*, 4 *Bingh.* 150. *Teague v. Hubbard*, 8 *B. & C.* 345.

Agents — how appointed.] A person may become a party to a bill of exchange by his agent, and it is not necessary that such agent should be appointed in writing. *Anon.* 12 *Mod.* 564. An authority also, may be presumed from circumstances, as from a subsequent recognition of the agent's act by the principal. Thus, where an agent accepted a bill for his principal, who admitted that it was a just debt and ought to be paid, this was held to be evidence of a special authority to accept. *Howard v. Baillie*, 2 *H. B.* 618. So if a person has in the principal's absence usually accepted bills for him, and the principal on his return, has approved thereof, it would always be construed as his intention, and be as valid and binding as a legal and formal instrument. *Beawes, pl.* 86. So where one Taylor accepted several bills in the defendant's name which the latter had paid, in an action on a similar bill, Lord Kenyon ruled that though the defendant might not have accepted the bill, he had adopted the acceptance, and made himself thereby liable to the payment of it. *Barber v. Gingell*, 3 *Esp.* 60. *Neal v. Erving*, 1 *Esp.* 61. *Haughton v. Ewbank*, 4 *Campb.* 88. *Townsend v. Inglis, Holt, N. P. C.* 278. When an authority is once proved it will be presumed to continue. Thus, if a servant having power to draw bills in his master's name, is turned out of the service, and draws a bill in so little time after that the world cannot take notice of his being out of service, or if he were a long time out of his service, but it is kept so secret that the world cannot take notice of it, the bill will bind the master. *Per Holt, C. J.* ——— *v. Harrison*, 12 *Mod.* 346. And if my servant has a note for money due to him, or other goods which in their nature are not properly in the custody of a servant, that is evidence *primâ facie*, that he has an authority from me to apply them to such use as he does afterwards put them to, but the contrary may be given in evidence, as that he came by the note by undue means or had it to another particular purpose. *Per Holt, C. J. Anon.* 12 *Mod.* 564.

One partner may, by procuration, indorse bills for the firm. *Williamson v. Johnson*, 1 *B. & C.* 146. 2 *D. & R.* 283. *S. C.*

Agents — cannot depute their authority.] In general an agent cannot delegate his authority, unless he has express power so to do. *Palliser v. Ord, Bunbury*, 166. *Coles v. Trecothick*, 9 *Vesey*, 234. But where a person authorised another "to make use of his name by procuration or otherwise to draw bills," and a clerk of the latter drew a bill *per procuration* of the principal, the Lord Chancellor held that the principal was bound, for that whenever this sort of authority is given it must be taken to be given, to be made use of in the common course of business, and that the clerk only did in the name of the principal, what he used to do in the name of the agent. *Ex-parte Sutton*, 2 *Cox's Ca.* 84. *but see Coles v. Trecothick*, 9 *Ves.* 234.

Agents — extent of authority.] There is this distinction between a general and a special agent, that in the first case the principal must be bound by all his acts, whereas in the latter he is only bound while the agent acts within the scope of his authority. *Per Lord Kenyon, East India Company v. Hensley*, 1 *Esp.* 112. A general authority does not import an unqualified authority, but that which is derived from a multitude of instances; whereas a particular authority is confined to an individual instance. *Per Lord Ellenborough, Whitehead v. Tuckett*, 15 *East*, 408. Where the holder of a bill desired A. to get it discounted, but positively refused to indorse it, and A. delivered it to B. for the same purpose, informing him to whom it belonged, and B. finding he could not dispose of it without indorsing it, was prevailed upon to do so by A.'s telling him that he would indemnify him; but the indorsee took it upon the credit of the names on the bill without any knowledge of the real owner, although such original holder afterwards promised to pay the bill; it was held that such promise would not support an action against him by the indorsee, it being *nudum pactum*, for as A. was a special agent under a limited authority he could not bind his principal by any act beyond the scope of such limited authority. *Fenn v. Harrison*, 3 *T. R.* 757. *Lord Kenyon diss.* But where the agent is merely employed to get the bill discounted, without his authority being limited, he may bind his employers by warranting the bill to be good. *S. C.* 4 *T. R.* 177.

Where a person delivers to another a blank form of a promissory note with his name endorsed thereon, he will be liable for any sum and time of payment which that person may

choose to insert. *Russell v. Langstaff*, *Dougl.* 496. And the issuing a bill in blank without the name of the payee is an authority to a *bonâ fide* holder to insert the name. *Crutchley v. Clarance*, 2 *M. & S.* 90. *Crutchley v. Mann*, 5 *Taunt.* 529. *ante*, *p.* 23. *See also Collis v. Emett*, 1 *H. B.* 313.

A power of attorney from an executrix to ask, demand, sue for, and receive all sums, &c. due to her as executrix, and to adjust and settle all accounts, differences, &c., and to do all further acts for receiving debts, &c., with power to do and act touching and concerning the premises as effectually as the principal could do, as executrix, does not authorise the attorney to bind his principal by accepting bills, for debts due from her testator. *Gardner v. Baillie*, 6 *T. R.* 591. *in which the Judges of C. P. who decided Howard v. Baillie*, 2 *H. B.* 618. *concurred.* So a power of attorney to demand and receive all monies due from the principal, on any account whatsoever, and to use all means for the recovery thereof, and to appoint attornies for the purpose of bringing actions, and to revoke the same, and to do all other business, does not confer upon the attorney a power to indorse a bill which comes to his hands. *Hay v. Goldsmid*, 2 *Smith*, 79. *cited* 1 *Taunt.* 349. So a power to ask, claim, and receive a certain salary and all other money whatsoever, with authority and power to receive, recover, obtain, compound, and discharge the same as fully as the principal could do, will not authorise the attorney to indorse and discount bills received under the power. *Hogg v. Snaith*, 1 *Taunt.* 347. A. B. who carried on business on his own account, and also in partnership, went abroad, and gave to certain persons in this country two powers of attorney, by the first of which authority was given, for him and in his name and to his use, to do certain specific acts (and amongst others to indorse bills), and generally act for him, as he might do if he were present; and by the second authority was given "for him and on his behalf to accept bills drawn on him by his agents, or correspondents." C. D. one of A. B.'s partners, and who acted as his agent, in order to raise money for the payment of the creditors of the joint concern, drew a bill which the attorney accepted in A. B.'s name by "procuration." In an action against A. B. by the indorsee of the bill, it was held, first, that the right of the indorsee depended upon the authority given to the attorney; secondly, that the powers applied only to A. B.'s individual, and not to his partnership affairs; thirdly, that the special power to accept extended only to bills drawn by an agent in that capacity, and that C. D. did not draw the bill in question as an agent but as partner; and lastly, that the general words in the powers of attorney were not to be construed at large, but as giving general powers for the carrying into effect the special purposes

for which they were given. *Attwood v. Munnings*, 7 *B. & C.* 278.

Agents—when personally responsible.] Where a bill or note is drawn by an agent, executor, or trustee, he must, if he means to exempt himself from personal responsibility, use clear and explicit words to shew that intention. It is an universal rule that a man who puts his name to a bill of exchange thereby makes himself personally liable, unless he states upon the face of the bill that he subscribes it *for* another, or by procuration of another, which are words of exclusion. *Per Lord Ellenborough, Leadbitter v. Farrow*, 5 *M. & S.* 349. *See Wilks v. Back*, 2 *East*, 144. Thus where a bill was addressed "To Mr. H. B. cashier of the York Buildings Company, at their house, &c.," and directed the drawee to pay and place the same to the account of the York Buildings Company, and H. B. wrote upon the bill "*accepted per H. B.*" it was held that H. B. had rendered himself personally liable. *Thomas v. Bishop*, 2 *Str.* 955. *Rep. temp. Hardw.* 1 *S. C.* (*Note* 9.) So where a broker employed to sell goods drew upon the purchaser for the amount, in favour of his principals, it was held that the principals might sue him on the bill. By drawing the bill, the agent put an end to all doubt as to the purchaser's responsibility, and the principals, on receiving it, would dismiss from their minds all care about the purchaser's solvency. *Le Fevre v. Lloyd*, 5 *Taunt.* 750. 1 *Marsh.* 318. *S. C.* So where the plaintiff sent for a bill upon London to the defendant, the agent to a country bank, and whom the plaintiff knew to be such, and the defendant gave him a bill (one of the printed forms of the bank), but signed by himself as drawer, it was held that the defendant was personally liable in that character. *Leadbitter v. Farrow*, 5 *M. & S.* 345. So where the plaintiffs employed the defendants, for a commission of one half per cent., to procure bills on London and transmit them to Paris, and the defendants indorsed those bills, it was held that they were liable as indorsers to the plaintiffs. *Goupy v. Harden*, 7 *Taunt.* 159. 2 *Marsh.* 454. *Holt, N. P. C.* 342. *S. C.* But where an officer appointed by government treats as an agent for the public, he is not liable to be sued upon contracts made by him in that capacity. *Macbeath v. Haldimand*, 1 *T. R.* 172. And where an agent, in the course of his employment as such, procured a banker's bill which was accidentally drawn in his favor, and indorsed by him to his employer, who deposited it with a banker, who gave credit for the amount, but was cognisant of the manner in which the bill had been indorsed, the court of exchequer restrained an action brought by the banker on the bill against the agent as indorser. *Kidson v. Dilworth*, 5 *Price*, 564.

Where commissioners of an enclosure act, empowered to make a rate to defray the expences of the act, drew drafts for such expences on their bankers, desiring them to pay to A. B. or bearer, on account of the public drainage, and to place the same to their account as commissioners, it was held that they were personally liable for the amount of such drafts to the bankers. *Eaton v. Bell*, 5 *B. & A.* 34.

Aliens.] A contract made with an alien enemy is invalid, and therefore, where a bill was drawn by an alien enemy upon, and accepted by the defendants in this country, and indorsed to the plaintiff, an Englishman resident in the enemy's country; upon an action brought after the return of peace, it was held that it could not be enforced. *Willison v. Patteson*, 7 *Taunt.* 439. 1 *B. Moore*, 333. *S. C.* But where a bill was drawn during the time of war by a British subject then a prisoner in France, upon a British subject in England, payable to another British subject detained in France, and indorsed by him to the plaintiff, a French subject, who sued the acceptor in this country on the return of peace, it was held (the stat. 34 Geo. 3. c. 9. s. 2. having expired) that the plaintiff was entitled to recover. *Antoine v. Morshead*, 6 *Taunt.* 237. 1 *Marsh.* 558. *S. C.* 7 *Taunt.* 447. (*Note* 10.) And where a bill was drawn by a prisoner of war in France upon a person resident in England, in favour of an alien enemy (which was void by stat. 34 Geo. 3. c. 9. s. 2.) and the drawer on the return of peace expressly promised to pay the bills, Lord Ellenborough held that an action would lie against the defendant. *Duhammel v. Pickering*, 2 *Stark.* 91. And where a promissory note was given by an English subject at Paris in time of war for goods sold, Lord Ellenborough held that the payees, who were domiciled in Switzerland, might recover on the note. *Houriet v. Morris*, 3 *Campb.* 303.

Bankrupts.] An uncertificated bankrupt may take a bill of exchange or promissory note, and may sue upon it in his own name or indorse it, unless his assignees interfere, for the property acquired by a bankrupt subsequent to his bankruptcy does not vest absolutely in his assignees, although they have a right to claim it. *Drayton v. Dale*, 2 *B. & C.* 293. By an act of bankruptcy, the personal property of the bankrupt is vested in his assignees, and he cannot, therefore, transfer any bill or note at that time in his possession. *Pinkerton v. Adams*, 2 *Esp.* 611. Where one of several partners commits an act of bankruptcy he cannot bind the solvent partners by transferring bills of exchange belonging to the partnership. *Thomason v. Frere*, 10 *East*, 418. *Ramsbottom v. Cator*, 1 *Stark.* 228.

But if after an act of bankruptcy by one partner, he accepts a bill in the name of the firm, a *bonâ fide* indorsee for value may sue the partnership on such bill. *Lacy v. Woolcot*, 2 *D. & R.* 458, *and see post in this chapter, title Partners.* A bankrupt may render himself liable on a bill or note given after his bankruptcy for a debt due before. *Trueman v. Fenton, Cowp.* 544. *Brix v. Braham*, 1 *Bingh.* 281. *Haywood v. Chambers*, 5 *B. & A.* 753. 6 *Geo.* 4. *c.* 16. *s.* 131.

Corporations.] The issuing of bills and notes by corporations, and by partners exceeding the number of six, has been regulated by various statutes, and lastly by 7 Geo. 4. c. 46. *post.* By 6 Ann. c. 22. s. 9. reciting that by an act of parliament made in the 8th year of Wm. 3. it is amongst other things enacted, that during the continuance of the corporation of the governor and company of the bank of England, no other bank, or any other corporation, society, fellowship, company, or constitution, in the nature of a bank, shall be erected, established, permitted, suffered, countenanced, or allowed by act of parliament within the kingdom, as in and by the said act more at large may appear; nevertheless since the passing of the said act some corporations, by colour of the charters to them granted, and other great numbers of persons by pretence of deeds or covenants united together, have presumed to borrow great sums of money, and therewith, contrary to the intent of the said act, to deal as a bank, to the apparent danger of the established credit of the kingdom, it is therefore enacted, that during the continuance of the governor and company of the bank of England, it shall not be lawful for any body politic or corporate whatsoever, erected or to be erected, other than the said governor and company of the bank of England, or for other persons whatsoever, united or to be united in covenants or partnership, exceeding the number of six persons, in that part of Great Britain called England, to borrow, owe, or take up, any sum or sums of money on their bills or notes payable at demand, or at less time than six months from the borrowing thereof. By 15 Geo. 2. c. 13. s. 5. to prevent any doubts that may arise concerning the privilege or power given by former acts of parliament to the said governor and company of exclusive banking, and also in regard to the erecting any other bank or banks by parliament, or restraining other persons from banking, during the continuance of the privilege granted to the governor and company of the bank of England, it is enacted and declared, that it is the true intent and meaning of this act, that no other bank shall be erected, established, or allowed by parliament, and that it shall not be lawful for any body politic or corporate whatsoever, united or to be united, in covenants or partnership, exceeding the number of six persons, in that part

of Great Britain called England, to borrow, owe, or take up, any sum or sums of money on their bills or notes payable at demand, or at any less time than six months from the borrowing thereof, during the continuance of such said privileges to the said governor and company, who are thereby declared to be and remain a corporation, with the privilege of exclusive banking as before recited, subject to redemption on the terms and conditions therein mentioned. A similar provision is contained in the 21 Geo. 3. c. 60. s. 12., and 39 & 40 Geo. 3. c. 28. s. 15.

Upon these statutes it has been held, that where seven persons in partnership made a promissory note payable three months after date, but the number of the defendants did not appear on the face of the note, such note might be enforced. A contrary decision, it was said, would virtually incapacitate any number of persons exceeding six from entering into a commercial partnership, since it was essential to the very existence of such a partnership to draw bills of exchange, and great inconvenience would result, since it would be incumbent on every person before he took a bill, to enquire whether the firm by which it was drawn consisted of more than six members. But if a commercial partnership was made a mere color for raising money by the issue of notes, it would be within the prohibition of the statute. *Wigan v. Fowler*, 1 *Stark.* 459. 2 *Chitty*, 128. *S. C.* But where the corporation of the company and proprietors of the Manchester and Salford Water-works accepted a bill payable at three months from the date, the case was held to be within the prohibition of the above statutes, and it was distinguished from the above cited case of *Wigan v. Fowler*, because in the latter case it did not appear, on the face of the instrument, that the security was made by more than six persons: whereas in this case the bill appears to be accepted by a corporation; and it was said by Holroyd J. that as the statute does not expressly avoid the security, the bill of exchange under the circumstances stated in *Wigan v. Fowler* would not be void in the hands of an innocent indorsee. *Broughton v. the Manchester Water-works Co.* 3 *B. & A.* 1. But where a note for 1000*l.* at a shorter date than six months appeared to be signed by eight persons, Best C. J. said that he agreed with the opinion given by Lord Ellenborough in *Wigan v. Fowler*, and thought that, taking all the bank acts together, the object of the legislature was to give protection against rival banks only; that it did not appear that this note had any relation to persons in partnership for the purpose of banking, and that the case of *Broughton v. the Manchester Water-works*, went on the fact of the defendants' being a corporation. *Perring v. Dunston, Ry. & Moody*, 426. *and see the note there.*

The issuing of bills and notes by corporations or partnerships,

consisting of more than six members, is now regulated by stat. 7 Geo. 4. c. 46.

By sec. 1. it shall and may be lawful for any bodies politic or corporate, erected for the purposes of banking, or for any number of persons united in covenants or copartnership, although such persons so united or carrying on business together shall consist of more than six in number, to carry on the trade or business of bankers in England, in like manner as copartnerships of bankers consisting of not more than six persons in number may lawfully do, and for such bodies politic or corporate, or such persons so united as aforesaid, to make and issue their bills or notes at any place or places in England, exceeding the distance of 65 miles from London, payable on demand or otherwise, at some place or places specified upon such bills or notes exceeding the distance of 65 miles from London, and not elsewhere, and to borrow, owe, or take up any sum or sums of money on their bills and notes so made and issued at any such place or places as aforesaid; provided always that such corporations or persons carrying on such trade or business of bankers in copartnership, shall not have any house of business or establishment as bankers in London, or at any place or places, not exceeding the distance of 65 miles from London, and that every member of any such corporation or copartnership shall be liable to and responsible for the due payment of all bills and notes which shall be issued, and for all sums of money which shall be borrowed, owed, or taken up by the corporation or copartnership of which such person shall be a member, such person being a member at the period of the date of the bills or notes, or becoming or being a member before, or at the time of the bills or notes being payable, or being such member at the time of the borrowing, owing, or taking up of any sum or sums of money upon any bills or notes by the corporation or copartnership, or while any sum of money on any bills or notes is owing or unpaid, or at the time the same became due from the corporation or copartnership, any agreement, covenant or contract to the contrary notwithstanding.

By sec. 2. nothing in this act contained shall extend or be construed to extend to enable or authorise any such corporation or copartnership exceeding the number of six persons, so carrying on the trade or business of bankers as aforesaid, either by any member of, or person belonging to, any such corporation or copartnership, or by any agent or agents, or any other person or persons, on behalf of any such corporation or copartnership, to issue or re-issue in London, or at any place or places not exceeding the distance of 65 miles from London, any bill or note of such corporation or copartnership which shall be payable to bearer on demand, or any bank post bill, nor to draw upon any partner or agent, or other person or persons who may

be resident in London, or any place or places not exceeding the distance of 65 miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than 50*l*. Provided also, that it shall be lawful notwithstanding any thing herein or in the recited act (39 & 40 Geo. 3. c. 28.), contained, for any such corporation or copartnership to draw any bill of exchange for any sum of money amounting to the sum of 50*l*. or upwards payable either in London or elsewhere, at any period after date or after sight.

By sec. 3. provided also, that nothing in this act shall extend to enable or authorise any such corporation or copartnership, exceeding the number of six persons so carrying on the trade or business of bankers in England, as aforesaid, or any member, agent or agents, of any such corporation or copartnership, to borrow, owe, or take up in London, or at any place or places not exceeding the distance of 65 miles from London, any sum or sums of money, on any bill or promissory note of any such corporation or copartnership, payable on demand or at any less time than six months from the borrowing thereof, nor to make or issue any bill or bills of exchange or promissory note or notes of such corporation or copartnership, contrary to the provisions of the said recited act of 39 & 40 Geo. 3. save as provided by this act in that behalf. Provided also, that nothing herein contained shall extend or be construed to extend, to prevent any such corporation or copartnership by any agent or person authorised by them, from discounting in London or elsewhere, any bill or bills of exchange not drawn by or upon such corporation or copartnership, or by or upon any person on their behalf.

By sec. 4. before any such corporation or copartnership exceeding the number of six persons in England, shall begin to issue any bills or notes, or borrow, owe or take up any money on their bills, or notes, an account or return shall be made out, according to the form contained in the schedule (A), wherein shall be set forth the true names, title, or firm, of such intended or existing corporation or copartnership, and also, the names and places of abode, of all the members of such corporation, or of all the partners concerned or engaged in such copartnership, as the same respectively shall appear on the books of such corporation or copartnership, and the name or firm of every bank or banks established, or to be established by such corporation or copartnership, and also the names and places of abode of two or more persons being members of such corporation or copartnership, and being resident in England, who shall have been appointed public officers of such corporation or copartnership, together with the title of office or other description of every such public officer respectively, in the name of any one of whom such corporation shall

sue and be sued as thereinafter provided, and also the name of every town and place where any of the bills or notes of such corporation or copartnership shall be issued, by any such corporation or by their agent or agents, and every such *amount* (sic) or return shall be delivered to the commissioners of stamps, &c. to be filed and kept, &c.

By sec. 5. such account or return is to be verified by the oath of the secretary, or other public officer every year.

By sec. 6. a copy of every such account or return so filed or kept and registered at the stamp office, and which copy shall be certified to be a true copy under the hand or hands of one or more of the commissioners of stamps for the time being, upon proof made that such certificate has been signed with the handwriting of the person or persons making the same, and whom it shall not be necessary to prove. a commissioner or commissioners, shall, in all proceedings, civil or criminal, and in all cases whatsoever, be received in evidence, as proof of the appointment and authority of the public officers named in such account or return, and also, of the fact that all persons named therein as members of such corporation or copartnership were members thereof at the date of such account or return.

By sec. 9. all actions and suits, and also, all petitions to found any commission of bankruptcy against any person or persons, who may be at any time indebted to any such copartnership carrying on business under the provisions of this act, and all proceedings at law or in equity under any commission of bankruptcy, and all other proceedings at law or in equity to be commenced or instituted for or on behalf of any such copartnership against any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, for recovering any debts or enforcing any claims or demands due to such copartnership, or for any other matter relating to the concerns of such copartnership, shall and lawfully may after the passing of this act, be commenced or instituted and prosecuted in the name of any one of the public officers nominated as aforesaid, for the time being, of such copartnership, as the nominal plaintiff or petitioner for or on behalf of such copartnership; and that all actions or suits and proceedings at law or in equity to be commenced or instituted by any person or persons, bodies politic or corporate, or others, whether members of such copartnership or otherwise, against such copartnership, shall and lawfully may be commenced, instituted and prosecuted against any one or more of the public officers nominated as aforesaid, for the time being, of such copartnership. A similar proviso follows with regard to laying the property in indictments, and with regard to indictments for forgery.

By sec. 11. decrees of courts of equity against the public officer are to have effect against the copartnership.

By sec. 12. judgments against the public officer are to operate against the partnership.

By sec. 13. execution upon judgment against the public officer may issue against any member.

By sec. 16. the copartnership may issue unstamped notes, giving bond.

By sec. 19. if any such corporation or copartnership exceeding the number of six persons so carrying on the trade or business of bankers as aforesaid, shall either by any member of or persons belonging to any such corporation or copartnership, or by any agent or agents, or any other person or persons on behalf of such corporation or copartnership, issue or re-issue in London, or at any place or places not exceeding the distance of 65 miles from London, any bill or note of such corporation or copartnership which shall be payable on demand [not as in sec. 2. "*to bearer on demand*,"] or shall draw upon any partner or agent or other person or persons who may be resident in London, or at any place or places not exceeding the distance of 65 miles from London, any bill of exchange which shall be payable on demand, or which shall be for a less amount than 50*l.* and if any such corporation or copartnership exceeding the number of six persons so carrying on the trade or business of bankers in England, as aforesaid, or any member, agent or agents of any such corporation or copartnership, shall borrow, owe or take up in London, or at any place or places not exceeding the distance of 65 miles from London, any sum or sums of money on any bill or promissory note, of any such corporation or copartnership payable on demand, or at any less time than six months from the borrowing thereof, or shall make or issue any bill or bills of exchange or promissory note or notes of such corporation or copartnership, contrary to the provisions of the said recited act of 39 & 40 Geo. 3. save as provided by this act, such corporation or copartnership so offending, or on whose account or behalf any such offence as aforesaid shall be committed, shall for every such offence forfeit the sum of 50*l.*

It has been much doubted whether a corporation established without any power expressly given to them to make promissory notes, or to become parties to bills of exchange, would have any power to bind themselves by such instruments. "I should much doubt," says Mr. Justice Bayley, "whether such a corporation would have any power so to bind themselves, for purposes foreign to those for which they were originally established." *Broughton v. Manchester W. W. Co.* 3 *B. & A.* 8. So the court of Common Pleas were of opinion that assumpsit would not lie against a corporation, unless the act which authorised the making of promissory notes by a corporation impliedly impowered the corporation to make a promise. *Slark*

v. Highgate Archway Co. 5 *Taunt.* 794. However, as corporations are mentioned in the statute of Ann, as persons who may make or indorse notes, and to whom notes may be payable; and as it gives the like remedy to and for corporations and others, as upon inland bills of exchange; it implies, that by the custom of merchants, they might in some cases at least draw, indorse, accept, or sue upon bills of exchange; but if the being parties to bills or notes were inconsistent with the purpose for which they were incorporated, that inconsistency might be a bar to any remedy by, or through, or against them on a bill or note. *Bayley*, 52. Wherever an act of parliament authorises a corporation to draw and accept bills, it must be taken to give the holder of those bills the same remedy against the body corporate, as the law gives in other cases against any parties to a bill. *Murray v. East India Co.* 5 *B. & A.* 210. *and see Edie v. East India Co.* 2 *Burr.* 1216. 1 *Sir W. Bl.* 295. *S. C.* See further as to the capacity of corporations, to bind themselves by contracts not under seal. *R. v. Bigg*, 3 *P. Wms.* 423. *R. v. Inhab. of Chipping Norton*, 5 *East*, 239. *East London W. W. Co. v. Bailey*, 4 *Bingh.* 283. *Yarborough v. Bank of England*, 16 *East*, 11.

Executors and administrators.] The interest in a note or bill, on the death of the holder, vests in his executor or administrator, who may indorse it; *Rawlinson v. Stone*, 3 *Wils.* 1. 2 *Str.* 1260. *S. C.* and if a bill be indorsed to A. & B. as executors, they may declare as such in an action against the acceptor. *King v. Thom*, 1 *T. R.* 487. (*Note* 11.) Where a bill is indorsed to certain persons *as executors*, and they again indorse it, they become personally liable. *Per Buller J. King v. Thom*, 1 *T. R.* 489. So where the defendants as executors, gave a promissory note, whereby they as executors jointly and severally promised to pay 200*l.* on demand, with interest, it was held that they had rendered themselves personally liable. *Childs v. Monins*, 2 *B. & B.* 460. 5 *B. Moore*, 282. *S. C.* So where the executors of a deceased partner continued his share in the trade for the benefit of his child, it was held that they were liable upon a bill drawn for the use of the firm and indorsed by one of the surviving partners in the name of the firm. *Wightman v. Townroe*, 1 *M. & S.* 412.

Where a bill of exchange was indorsed generally, but delivered to S. C. as administratrix of J. C. for a debt due to the intestate, and S. C. died intestate after the bill became due, and before it was paid, it was held that the administrators *de bonis non* of J. C. might sue upon the bill, and that their title was sufficiently proved by producing the letters *de bonis non*, without producing those granted to S. C. *Catherwood v. Chabaud*, 1 *B. & C.* 150.

Where an agent having property of his principal in his hands, and being ignorant of the death of his principal, for the purpose of transmitting the property, obtained a bill of exchange for the value, and indorsed it specially to his principal; it was held that as the property, for which the bill was remitted, belonged to the principal's estate, it was competent to his administrator to elect to take the bill as a mode of payment, that the property vested in him, and that he acquired a right to sue upon the bill. *Murray v. East India Co.* 5 *B. & A.* 204.

Infants.] It is a general rule that the contracts of infants, unless for necessaries, are voidable, and cannot be enforced against them. On this ground an infant cannot bind himself as drawer of a bill of exchange, and if sued as such he may plead his infancy in bar; *Williams v Harrison, Carth.* 160; or give it in evidence under the general issue. The bill is voidable only as against the infant, and therefore, where a bill was accepted by two persons, one of whom was an infant, and the other was sued alone, and pleaded that he did not undertake unless jointly with the infant, upon replication that he did, and proof that the infant had not disaffirmed the acceptance, it was held that the issue ought to be found for the defendant. *Gibbs v. Merrill,* 3 *Taunt.* 307.

It seems that infancy is a personal privilege, and is only a good defence in an action on a bill of exchange where the infant himself is sued. Thus where a bill of exchange was drawn by two infants, payable to their own order, and indorsed by them to S. and by S. to the plaintiff, and accepted by the defendant; Lord Ellenborough held, that if the action had been against the drawers themselves, there might have been a good defence; but though the plaintiff derived title under them, the bill was not to be considered as void in his hands, and there was a verdict for the plaintiff. *Taylor v. Croker,* 4 *Esp.* 187. *Drayton v. Dale,* 2 *B. & C.* 299. So it has been held, that the drawer of a bill cannot set up the infancy of the payee and indorser as a defence to the action. *Grey v. Cowper, E.* 22 *G.* 3. 1 *Selw. N. P.* 287. 4*th Ed.* So where a bill had been indorsed by an infant, of which the acceptor was cognizant, it was held in an action against the acceptor, that he could not set up the infancy of the indorser as a defence. *Jones v. Darch,* 4 *Price,* 300. *see Jeune v. Ward,* 2 *Stark.* 330.

A person of full age, who accepts a bill drawn while he was an infant, is liable on the bill; *Stevens v. Jackson,* 4 *Campb.* 164; and an infant may make himself liable by a promise after full age, to pay a bill to which his infancy might otherwise have been a discharge. *Per Ld. Ellenborough, Taylor v. Croker,* 4 *Esp.* 188.

As an infant may sue on a contract made for his benefit, *Warwick v. Bruce*, 2 *M. & S.* 205, he may be a payee or indorsee. *Bayley*, 40. *Holliday v. Atkinson*, 5 *B. & C.* 501.

Whether an infant can bind himself by a bill or note for necessaries has not been decided. In *Williams v. Harrison*, *Carth.* 160, the court held, that as the bill of exchange was drawn in the course of trade and *not for any necessaries*, infancy was a good defence. In *Trueman v. Hurst*, 1 *T. R.* 40, which was an action on a note given for board and lodging, and for teaching and instructing the defendant, and upon an account stated, the defendant pleaded infancy, and the plaintiff replied necessaries; on demurrer to the replication, it was insisted that an infant could not bind himself by a note, even for necessaries, and that no action would lie against him even on an account stated. The court desired the plaintiff's counsel to confine himself to the last case, from whence it has been inferred that they thought the first was with him, but they decided against him on the last. *Bayley*, 454. In an action against the acceptor of a bill, he pleaded infancy, to which the plaintiff replied *necessaries*, and the defendant took issue. *Per Sir J. Mansfield, C. J.* "This action certainly cannot be maintained. The defendant is allowed to be an infant, and did any one ever hear of an infant being liable as acceptor of a bill of exchange? The replication is nonsense and ought to have been demurred to." *Williamson v. Watts*, 1 *Campb.* 552. It has been said that there seems to be no reason why a bill or note really given, and expressed to be given for necessaries by an infant, may not be considered as equally binding with a single bond. *Kyd on Bills*, 18. 2*d Ed.* But since it has been decided that an action cannot be maintained against an infant on an account stated for necessaries. *Trueman v. Hurst*, 1 *T. R.* 40, *Ingledew v. Douglas*, 2 *Stark.* 36, it seems to follow, that a bill or note cannot be enforced against an infant for necessaries, even by an immediate party. (*Note* 12.)

Lunatics.] A person of unsound mind, and incapable of making a contract, cannot be a party to a bill of exchange or promissory note. Thus in an action by the indorsee against the maker of a note, where the defence was, that the defendant was of an imbecile mind, and incapable of transacting the ordinary affairs of life, Lord Tenterden told the jury, that the question was whether the defendant, at the time he put his name to the note, was or was not conscious of what he was doing; if he was, that there must be a verdict for the plaintiff; but if he was not conscious of what he was doing, and was imposed on by reason of his imbecility of mind, that the jury ought to find for the defendant. The jury accordingly found a verdict for the defendant. *Sentance v. Poole*, 3 *C. & P.* 1. (*Note* 13.)

Married women.] In general, all contracts entered into by married women are *void*, and therefore, a married woman cannot draw, accept, or indorse a bill, so as to give any remedy against herself, or to transfer any interest to another party. Thus, where the defendant made a note payable to a married woman, knowing her to be such, with intent that she should indorse it to the plaintiff, and she indorsed it accordingly in her own name, it was held that the plaintiff could not recover. *Barlow v. Bishop*, 1 *East*, 432. But in some cases, an authority from the husband to indorse may be presumed; thus, where a note was made payable to a married woman by another name, and indorsed by her in that name, after which the maker promised the holder to pay it; Lord Ellenborough held that after this promise it might reasonably be presumed as against the maker, that the indorser had authority from her husband to indorse the note in the name by which she herself passed in the world. *Cotes v. Davies*, 1 *Camph.* 488. And in those cases in which a feme covert has, for the purposes of a suit, been considered as a feme sole, as where the husband has abjured the realm, *Lean v. Schutz*, 2 *W. Bl.* 1199. 3 *B. & C.* 297. or been transported for a limited period, *Carrol v. Blencow*, 4 *Esp.* 27, she may, it seems, bind herself by becoming party to a bill of exchange. But the living apart from her husband, and having a separate maintenance by deed, is not sufficient. *Marshall v. Rutton*, 8 *T. R.* 545.

Where a bill or note is indorsed to a feme sole, and she afterwards marries, the property in the bill or note vests in her husband. *Connor v. Martin*, *cited* 3 *Wils.* 5. And where a bill is made payable to a feme sole, and she marries before it becomes due, the husband may sue upon it in his own name without joining his wife, though the latter has not indorsed the bill, for by the act of marriage he is virtually an indorsee. *M'Neilage v. Holloway*, 1 *B. & A.* 218. So where a bill or note is indorsed to a feme covert, it vests in the husband. *Barlow v. Bishop*, 1 *East*, 432. And where a promissory note is made to a feme covert, the husband may either sue upon it in his own name, and treat it as if it were made to himself, *Arnold v. Revoult*, 1 *B. & B.* 443. 4 *B. Moore*, 70. *S. C.* or may bring an action upon it in the joint names of himself and his wife, who may be considered as the meritorious cause of the action. *Philliskirk v. Pluckwell*, 2 *M. & S.* 395.

In the following case a remedy was afforded in equity on a promissory note made by a married woman. The wife having a separate property settled upon her, requested the plaintiff to lend her 250*l.*, which she promised should be repaid to him with interest out of her separate property; the plaintiff accordingly advanced the sum, and she gave her promissory note for 250*l.* and interest. A bill being filed against the husband, wife,

and trustees of the separate property, it was decreed that the trustees should pay to the plaintiff what should be found due in respect of the principal, interest, and costs, out of the rents and profits of the separate property. *Bullpin v. Clarke*, 17 *Ves.* 366.

If a husband indorse a promissory note made by his wife, an action may be maintained on it against him by the indorsee. *Haly v. Lane*, 2 *Atk.* 182.

Partners.] In drawing and accepting bills, it was never doubted but that one partner might bind the rest. *Per Lord Kenyon, Harrison v. Jackson*, 7 *T. R.* 210. *And see Pinkney v. Hall*, 1 *Lord Raym.* 175. 1 *Salk.* 126. *S. C. Smith v. Jerves*, 2 *Lord Raym.* 1484. So one of several partners may bind his copartners by indorsing a bill in their joint names. *Swan v. Steele*, 7 *East*, 210. *Ridley v. Taylor*, 13 *East*, 175. *post.*

Partners—mode of becoming parties to bills, &c.] Where a partner made a promissory note in this form, "Sixty days after sight I pay Lord G. or order 200*l.* value received, for J. M., T. W. and T. S. —— J. M.;" Lord Ellenborough held that it was sufficient to bind the whole firm. *Lord Galway v. Matthew*, 1 *Campb.* 403. 10 *East*, 264. *S. C. And see Smith v. Jerves*, 2 *Lord Raym.* 1484. But in the case of a similar note, where the party actually making it had been sued alone, the court held that the action was rightly brought. *Hall v. Smith*, 1 *B. & C.* 407. 2 *D. & R.* 584. *S. C. see ante, p.* 18. Where a bill was drawn upon "Messrs R. & Co." and T. R. jun. one of the firm, wrote across it "Accepted, T. R. sen." Lord Ellenborough held it a sufficient acceptance to charge the firm. It would have been enough if "accepted" had been written on the bill, and the effect could not be altered by adding "T. R. sen." *Mason v. Rumsey*, 1 *Campb.* 384. But where the name of one partner only appears on the bill or note, his copartners will not be bound, though it was in fact made or accepted for partnership purposes. Thus, where the plaintiff declared on a promissory note made by T. W. in his own name, as on a note made by T. W. and R. and offered to prove in evidence that T. W. and R. were jointly indebted, and gave the note for that debt, he was nonsuited on the ground that this was a separate security for a joint debt. *Siffkin v. Walker*, 2 *Campb.* 307. So where one of two partners drew bills of exchange in his own name, which he procured to be discounted, and carried the proceeds to the partnership account, it was held that the party discounting the bills could neither sue the partnership upon them, nor for money lent to the partnership, although he conceived all the bills to be drawn on the partnership account. *Emly v. Lye*, 15 *East*, 7. *And see Kilgour v. Finlyson*, 1 *H. Bl.* 156.

But where the partner, who drew the bills in his own name, had authority from his other partners to raise money for the use of the firm, and money was accordingly raised in pursuance of such authority, Lord Ellenborough was of opinion that this case was distinguished from *Emly v. Lye*, that it was a loan rather than a discount, and that though the partners were not jointly liable upon the unaccepted bills, they were jointly indebted for the same amount, as for money lent or money had and received. *Denton v. Rodie*, 3 *Campb.* 493. *Ex parte Bolitho*, 1 *Buck*, 100.

Partners—power to bind co-partners by drawing, &c. for separate use.] Many cases have arisen on the powers of partners to bind their co-partners, by drawing, accepting, or indorsing bills in the partnership name, for the use of the individual partner. The following are the observations of Lord Eldon on this subject; "I agree it is settled that if a man gives a partnership engagement in the partnership name with regard to a transaction, not in its nature a partnership transaction, he who seeks the benefit of that engagement must be able to say, that though in its nature not a partnership transaction, yet there was some authority beyond the mere circumstance of partnership to enter into that contract so as to bind the partnership, and then it depends upon the degree of evidence." *Per Lord Eldon, Ex parte Peele*, 6 *Ves.* 604. "I agree, if it is manifest to the persons advancing money, that it is upon the separate account, and so that it is against good faith that he should pledge the partnership, then they should show that he had authority to bind the partnership. But if it is in the ordinary course of commercial transactions, as upon discount, it would be monstrous to hold, that a man borrowing money upon a bill of exchange, pledging the partnership without any knowledge in the bankers that it is a separate transaction, merely because that money is all carried into the books of the individual, therefore the partnership should not be bound; no case has gone that length." *Per Lord Eldon, Ex parte Bonbonus*, 8 *Ves.* 542. "There is no doubt now, that if under the circumstances the party taking the paper can be considered as being advertised in the nature of the transaction, that it was not intended to be a partnership proceeding, as if it was for an antecedent debt, *primâ facie* it will not bind them, but it will if you can show previous authority or subsequent approbation, a strong case of subsequent approbation, raising an inference of previous positive authority. In many cases of partnership and different private concerns, it is frequently necessary for the salvation of the partnership, that the private demand of one partner should be satisfied at the moment, for the ruin of one partner would spread to the others, who would rather let him liberate himself by dealing with the firm." *Ibid.*

Partners.—In what cases a partner cannot bind his co-partners by pledging the credit of the firm for his separate debt.] It is laid down in an old case, that by the custom of England, where there are two joint traders, and one accepts a bill drawn on both, for him and his partner, it binds both, if it concerns the trade; otherwise, if it concerns the acceptor only in a distinct interest and respect; *Pinkney v. Hall*, 1 *Salk.* 126; for the law does not imply an authority in individual partners over the joint fund, except in matters which affect the partnership concerns. *Ex parte Agace*, 2 *Cox's Ca.* 312. Thus, it is said by Lord Kenyon, that if a man, who has dealings with one partner only, draws a bill on the partnership on account of those dealings, he is guilty of a fraud, and in his hands the acceptance made by that partner would be void, but it would be otherwise in the hands of a *bonâ fide* indorsee. *Wells v. Masterman*, 2 *Esp.* 731. So, where one of several partners, being indebted, and being pressed for the debt, drew the bill in question in the name of the firm, payable to himself, and indorsed it to his creditor, without the knowledge of his partners, but without communicating to his creditor that fact, Lord Ellenborough directed that the plaintiff should be nonsuited, on the ground that one partner had no right to bind another without his knowledge, by drawing a bill for his own private debt. *Green v. Deakin*, 2 *Stark.* 347. So, where one of two partners brought a bill to the plaintiff, and requested him to discount it, and indorsed it in the name of himself and his partner, desiring at the same time that the business might be kept a secret from his partner, the plaintiff was nonsuited; and, *per Lord Kenyon*, "One partner certainly may indorse a bill in the partnership name, and if it goes into the world, and gets into the hands of a *bonâ fide* holder, who takes it on the credit of the partnership name, and is ignorant of the circumstances, though in fact the bill was first discounted for that partner's own use, in such case the partnership is liable; but the case is different, where the party who brings the action was himself the person who took the indorsement by one partner only, and was informed that the transaction was to be concealed from the other; he cannot sue the partnership; the transaction indicates that the money was for that partner's own use, and not raised on the partnership account; he therefore shall not be allowed to resort to the security of the partnership, to whom in the original transaction he neither looked nor trusted." *Arden v. Sharpe*, 2 *Esp.* 523. So, where a bill was drawn by Brown, one of several partners, upon the firm, partly for a partnership debt, and partly for Brown's own private debt, and accepted by Brown in the name of the firm, unknown to his co-partners, Brown having suffered judgment by default, and the amount of the partnership debt being paid into court, the jury, under the direction of Lord Kenyon, found a verdict for the other defendant. *Barber v. Backhouse, Peake*, 61.

The plaintiffs having sold goods to Bishop and Wilks, who had subsequently taken Robson into partnership, and traded under the firm of G. Bishop & Co. drew upon G. Bishop & Co. for the amount of their debt, which bill was accepted by Bishop, in the name of G. Bishop & Co. and the three partners were sued upon it. No fraud was found, but Lord Kenyon said, that the transaction was fraudulent on the face of it, and it was held, that the plaintiffs could not recover. *Shirreff v. Wilks*, 1 *East*, 48. *See the observations on this case in Ridley v. Taylor*, 15 *East*, 175. O'Neill having contracted a debt with Goulding & Co. entered into partnership with Martin. After the partnership, the agent of O'Neil delivered to the creditors, in satisfaction of their debt, a bill drawn by him on the firm of O'Neill and Martin. The bill was left at the counting-house of the partnership, and returned by a clerk there, accepted, in the name of the firm, by O'Neill, without the authority or privity of Martin. No fraud or collusion on the part of Goulding & Co. appeared. O'Neill and Martin having become bankrupt, Goulding & Co. petitioned to be admitted to prove the bill on the joint estate, but the Vice Chancellor refused to order it, saying, "After an attentive consideration of the several authorities, I am of opinion that when one partner gives the acceptance of the firm in payment of his separate debt, without authority from his co-partner, such acceptance does not bind the firm." *Ex parte Goulding*, 2 *G. & J.* 119. So, in an action against three acceptors, where it appeared, that the defendants were partners in a tea speculation, and the drawer, a wine merchant, drew in payment for wine delivered to one of the three, Abbott, C. J. directed the jury, that if they found that the bill was so drawn without the knowledge and consent of the other two defendants, they were not liable, and the jury found for the defendants. *Wood v. Holbeer*, 1826. *Chitty on Bills*, 34. *7th edit.* The plaintiff sold goods to Hugh Rowland, who was partner with Ashby & Shaw. Shaw was a dormant partner, the fact of his being a partner not being known, nor his name used in the transactions of the firm. The plaintiff had agreed to take the acceptance of Ashby & Co. in payment, and Hugh Rowland accordingly drew in his own favor on Ashby & Co. and the bill was accepted by his son, in the name of *Ashby & Rowland*, and was indorsed to the plaintiff, who sued Ashby, Rowland, and Shaw, as acceptors. *Per Abbott C. J.*—"I must take it on the evidence, that this bill was accepted, either for a debt due before Mr. Shaw became a partner, or for the accommodation of others. If Shaw had been known to be a partner, I should have held, that it was taken on his credit, and that unless there was a fraud in the plaintiff, he would be entitled to recover on it against Shaw; but as the plaintiff did not know that Shaw was a partner, and as he could not have taken the bill on Shaw's credit, I am of

opinion that the plaintiff cannot recover. I ground myself on these circumstances, that Mr. Shaw was an unknown partner, and that the bill was not accepted for a debt due from him, but for the raising of money from which he had no benefit." The plaintiff was nonsuited. In the ensuing term, a rule nisi for a new trial was granted. *Lloyd v. Ashby*, 2 *C. & P.* 138.

In some instances, applications have been made to equity, to restrain one partner from accepting or negotiating bills of exchange, in the name of the partnership, unless for the purposes of the partnership. *Williams v. Bingley*, 2 *Vern.* 278. (*n*). *Master v. Kirton*, 3 *Ves.* 74. *Newsome v. Coles*, 2 *Campb.* 618. *Ryan v. Mackmath*, 3 *Bro. C. C.* 15. *Lawson v. Morgan*, 1 *Price*, 303. *Houlditch v. Nias*, 8 *Price*, 689.

Partners—in what cases a partner may bind his co-partners by pledging the credit of the firm for his separate debt.] In some cases it has been decided, that a party who has received a bill, given by one of several partners, for his separate debt, may, in the absence of fraud and collusion, sue the partnership on such bill. Wood and Payne carried on business, as grocers, under the firm of "Wood & Payne." Wood, Payne, and Steele, carried on business, as cotton dealers, under the same firm. The plaintiffs sold to Wood & Payne, as grocers, goods, for which the latter gave their acceptances, at four months, but not being able to provide for these acceptances, they delivered to the plaintiffs a bill which had been paid to "Wood & Payne," *as cotton dealers*, and which was indorsed to the plaintiffs by either Wood or Payne, without the knowledge of Steele, as all other bills in the cotton trade were. *Per Lord Ellenborough*,—"It would be strange and novel doctrine, to hold it necessary for a person receiving a bill of exchange, indorsed by one of several partners, to apply to each of the other partners, to know whether he assented to such indorsement, or otherwise that it should be void. There is no doubt, that in the absence of all fraud on the part of the indorsee, such indorsement would bind all the partners. There may be partnerships where none of the existing partners have their names in the firm. Third persons may not know who they are, and yet they are all bound by the acts of any of the partners, in the name or firm of the partnership. The case is too clear for argument, and I should not have permitted the point to be reserved, if I had not understood at the trial, that there were some other facts in the case which might raise a doubt. The distinction is well settled, that if the creditor of one of the partners collude with him, to take payment or security for his individual debt out of the partnership funds, knowing at the time that it is without the consent of the other partner, it is fraudulent, and void; but if it be taken *bonâ fide*, without such knowledge at the time, no subsequently acquired knowledge of the misconduct of

the partner in giving such security can disaffirm the act. Now here the three persons were trading under the firm of 'Wood & Payne,' and in the course of their dealings, as partners, received the bill in question, and it was competent to either of them, by his indorsement in the name of the firm, to pass their interest in the bill, and the plaintiffs, ignorant of any fraud at the time, take it by such indorsement from one of the partners. Then, if the interest of the plaintiffs in the bill were once well vested, no subsequent knowledge, that such indorsement was made without the consent of one of the partners, will divest it. And it would be highly inconvenient that it should; because, if the plaintiffs had been apprised at the time, that the partner who indorsed the bill had no authority to do so, they might have obtained some other security for their demand." *Swan v. Steele*, 7 *East*, 210. The plaintiffs having sold goods to Ewbank (who was partner with Ord), on his separate account, Ewbank drew a bill in the name of the firm, payable to the order of the firm, and indorsed it to plaintiff, for his separate debt. The bill was accepted by the defendant. In delivering the judgment of the court, Lord Ellenborough said, "If this were distinctly the case of a pledging, by one partner, of a partnership security for his own separate debt, without the authority of the other partner, or if there existed in this case evident covin between one partner, and the holder of the partnership security upon which the action is brought, in order to charge the other partner, without his knowledge or consent, either express or implied, for the private advantage of the parties to such covinous agreement, we should have no hesitation to pronounce a bill, drawn and indorsed under such circumstances, void in the hands of the covinous holders, upon the principle laid down in the case of *Shirreff v. Wilks*, (*ante* p. 62.) But upon the facts stated, such does not distinctly appear to us to be the case. Nor does it appear that there was any such *crassa negligentia* on the part of the plaintiffs, in not enquiring whether Ewbank, the one partner with whom they dealt, was authorised to dispose of this security, (which had originally been partnership property) as his own, as to render this transaction on that account fraudulent, and therefore void." His Lordship then distinguished *Shirreff v. Wilks*, and continued, "In the present case so strong an inference of covin does not arise. Ord and Ewbank would have been competent witnesses for the defendant; positive evidence, therefore, on the point of covin, if there really were any, might have been adduced. This bill had an existence, according to its apparent date, eighteen days before the time of its delivery to the plaintiffs; it was drawn for a sum considerably exceeding the debt; and it was not only drawn and indorsed, but accepted also, before it was produced to them, and although it is stated in the case, that the bill in fact was drawn and indorsed by Ewbank, in the partnership firm, it does not appear that the

plaintiffs knew that it was drawn and indorsed by him. Under these circumstances, it might reasonably be supposed by the party to whom it was given, to be a partnership security, of which Ewbank, the partner in possession of it, had, for some valuable consideration, or in virtue of some arrangement with Ord, the other partner, become the proprietor, so as to be authorised to deal with it as his own. At any rate, the contrary does not actually, or presumptively appear; and it seems to us, in order to deprive the plaintiff of the benefit of such a security, in a case which admits of positive proof to the contrary, that the contrary should appear, and, that either actual covin should be shewn, or that, at least, more pregnant evidence to induce that conclusion should have been given by the defendant. All that appears here is, that a partnership security was applied by the one partner, Ewbank, in satisfaction of his separate debt without shewing that such application, was, at the time, unknown to, or unauthorised by the other partner, Ord, as by the evidence of either Ewbank or Ord, it was competent for the defendant, in point of law, to have done; and, without laying before the court any other evidence, from which the same conclusion ought to be drawn. In the absence, therefore, of any evidence to shew that the delivery of this bill to the plaintiffs was covinous, in a case where positive evidence of the covin might have been given, had covin existed, the court feels itself obliged to give effect to the transfer of the bill, and to say that the defendant, who relied upon covin as his defence, has not satisfactorily established such covin." *Ridley v. Taylor*, 13 *East*, 175.

Where a bill was drawn on the firm of J. King, and Co. under which firm the defendant and his partners had traded, and it also appeared that there were other partnerships carried on under the firm of J. King and Co. in which the other drawers were concerned, but in which the defendant had no share, and the defendant offered to shew that this bill was not drawn on account of the partnership in which he was concerned, but on account of one of the others, Lord Kenyon was of opinion that the defendant was nevertheless liable. He had traded with the other partners under that firm, and persons taking bills under it, though without his knowledge, had a right to look to him for payment. *Baker v. Charlton*, *Peake*, 80. 2 *D. & R.* 460. *post*, *p.* 66. So it is said to have been decided in a recent case in the House of Lords, that where several partnerships consisting of different individuals carry on business together under the same firm, and enter into negotiable securities under the same signature, the holder of such securities has a right to select which of those partnerships he chooses for his debtor. *M'Nair v. Fleming*, *Mont. on Part.* 32. (*n*). The above appears to be the same case as that alluded to by Lord Eldon in *Davison* v. *Robertson*, 3 *Dow*, 229, where it is said a very remarkable case

had come before their lordships about three years ago, in which it appeared that the business of about half a dozen different firms was carried on under the same general name, and their lordships held, that unless they could fix the man who held any of their bills with the knowledge that it was the bill of A. & Co. or any other of the separate firms, he had got paper which gave him recource upon them all. The opinion of Lord Kenyon, in the above cited case of *Baker v. Charlton*, must be taken to be subject to the limitation just laid down, that the party enforcing the bill does not appear to have been affected with knowledge, that it was the bill of any one individual partnership at the time when he took it.

In the above cited case of *Arden v. Sharpe*, 2 *Esp.* 523. *ante*, *p.* 61. it was admitted by Lord Kenyon that a *bonâ fide* indorsee may recover on a bill indorsed by one partner in the partnership name for his own benefit. *See also Lacy v. Woolcot*, 2 *D. & R.* 458. So in *Grant v. Hawkes*, 1817. *Chitty on Bills*, 425, *5th ed.* which was an action against several defendants as partners in the Butterly Company, and as acceptors of a bill, at the suit of the plaintiff as indorsee, the defendants having proved that by the articles of the company, the members were prohibited from circulating any bills or notes, Lord Ellenborough said, "an indorsee may recover on a bill against partners in a concern, though the drawing or accepting were contrary to agreement between them, and by one of the partners in fraud of the rest, but then the indorsee must shew that he gave value." In the case of *Williams v. Thomas*, 6 *Esp.* 18. Lord Ellenborough appears to have been of opinion that even a *bonâ fide* holder could not enforce a bill against several persons, partners in a particular transaction, when the bill had been accepted by one of them, not on account of that transaction.

Partners — one partner cannot bind his co-partners by giving a bill or note in the partnership name, where the party receiving it and suing upon it knew, at the time of taking it, that the other partners had given notice that they would not be bound by such transactions.] The authority of one partner to bind another is only an implied authority, and may be rebutted by proof, that the other partner disclaimed such authority. *See* ——— *v. Layfield*, 1 *Salk.* 292. *Minnitt v. Whitney*, *Vin. Ab. Partners* (A). *Willis v. Dyson*, 1 *Stark.* 164. *Vere v. Fleming*, 1 *Young & Jervis*, 227. Thus, where one Mathew, a partner with Smithson, gave to the plaintiff a promissory note in the name of the firm, for which the plaintiff gave him his acceptance, which Matthew procured to be discounted, and applied the proceeds partly to the use of the firm and partly to his own use, and it appeared that the plaintiff had notice that Smithson would not be liable for drafts drawn by Matthew on the partnership account, it was held that the

plaintiff could not recover against both partners on the note, and *per Lord Ellenborough*, "It is not essential that one partner should have power to draw bills and notes in the partnership firm, to charge the others; they may stipulate between themselves that it shall not be done, and if a third person having notice of this will take such a security from one of the partners, he shall not sue the others upon it, on breach of such stipulation, nor in defiance of a notice previously given to him by one of them, that he will not be liable for any bill or note signed by the others." *Lord Galway v. Matthew*, 10 *East*, 264. and see *Rooth v. Quin*, 7 *Price*, 193. (*Note* 14.)

Partners — power to bind the firm ceases on dissolution of partnership.] The implied power of one partner to bind his copartners ceases immediately on the dissolution of partnership. Thus, when, after the dissolution of partnership between A. and B., B. accepted a bill in the name of himself and A., which bill bore date before, but was actually made after the dissolution, Lord Ellenborough held that the plaintiffs, who were indorsees for value, but who had taken the bill after notice of the dissolution in the Gazette, without actual notice of the dissolution, could not recover in an action against A. and B. *Wrightson v. Pullan*, 1 *Stark.* 375. *Newsome v. Coles*, 2 *Campb.* 617. The moment the partnership ceases the partners become distinct persons; they are tenants in common of the partnership property undisposed of, from that period, and if they send any securities which belonged to the partnership into the world, after such dissolution, all must join in doing so. *Per Lord Kenyon*, *Abel v. Sutton*, 3 *Esp.* 110. Nor will it make any distinction that the bill is accepted for a partnership debt. *Dolman v. Orchard*, 2 *C. & P.* 104. Where, on the dissolution of a partnership between A. B. and C., a power was given to A. to receive all debts owing to, and pay those owing from the late partnership, it was held that this power did not authorise A. to indorse a bill of exchange in the name of the partnership, though drawn by him in that name and accepted by a debtor of the partnership after the dissolution; and it was also held that the indorsee could not maintain an action against A. B and C., for money paid to the use of the partnership, though in point of fact the money raised by discounting a note given by the indorsee was applied by A. to the payment of a debt due from the partnership. *Kilgour v. Finlyson*, 1 *H. Bl.* 155. *and see ante, p.* 59. But, if after a dissolution of partnership, the parties continue to hold themselves out to the world as partners, as if they suffer their joint names to remain over the door of their counting-house, it is evidence from which a jury may be directed to presume an authority in the one to bind the other by accepting bills in their joint name. *See Dolman v. Orchard*, 2 *C. & P.* 104. *Williams v. Keats*, 2

Stark. 291. So where one of two partners, after committing an act of bankruptcy, accepted a bill in the partnership name, in an action against both the partners by a *bonâ fide* indorsee, it was held that they were liable. *Per Cur.* "It is clear that a man who suffers himself to appear as a partner to the world, is liable to all the responsibilities incurred by the firm, although he be not in reality a partner, and it was so held by Lord Kenyon in the case of *Baker v. Charlton, Peake* 80. (*ante, p.* 65.) That case was the exact converse of the present, and in principle applies to it pointedly. There the party was the innocent holder of a bill drawn by a firm, of which the defendant was a partner, but which he offered to prove was not the firm, by which the bill transactions of the partners were carried on. Here the plaintiffs are innocent indorsees, having taken the bills *bonâ fide,* and for a valuable consideration. They see the acceptance of 'W. and S.' upon the bills. Those persons were then in fact partners so far as their joint transactions with the world could make them such; one of them indeed had previously committed an act of bankruptcy, and in law perhaps the partnership was dissolved. (*Vide post, Chap.* VI.) But they continued to hold themselves out to the world ostensibly as partners, and therefore, each was bound by the acts of the other." *Lacy v. Woolcott,* 2 *D. & R.* 458. So where after a dissolution of partnership one of the partners informed the plaintiff of that fact, but added that his own name was to continue for a certain time, and afterwards the plaintiff took from the other partner a note drawn in the partnership name, it was held that the plaintiff might sue both the partners on the note. *Brown v. Leonard,* 2 *Chitty,* 120.

In order that the act of one partner after a dissolution of partnership, in drawing or indorsing bills, &c. may not bind his copartner, notice of the dissolution should be given. It seems to be sufficient notice to all persons who have not had dealings with the partnership to insert the notice of dissolution in the Gazette. The Gazette, however, is not conclusive notice. In *Godfrey v. Macauley, Peake,* 155, (*n.*) Lord Kenyon left it to the jury, whether it was probable that the plaintiff had seen the Gazette, it appearing that he lived in London, and took in two daily papers, but not the Gazette, and the jury found for the defendant. *See S. C.* 1 *Esp.* 371, *differently reported.* So in *Williams v. Keuts,* 2 *Stark.* 291, Lord Ellenborough said that notice in the Gazette, was not to be considered as notice of the dissolution of partnership to all the world; it was a medium of knowledge but not equivalent to actual notice. In the cases of *Newsome v. Coles,* 2 *Campb.* 617, and *Wrightson v. Pullan,* 1 *Stark.* 375, 2 *Chitty,* 121, *S. C.* the Gazette seems to have been considered sufficient evidence of notice to persons who had not been in the habit of dealing with the firm. (*Note* 15.) In *Munn v. Baker,* 2 *Stark.* 255, a distinction was

taken by Lord Ellenborough between notices of dissolution and other notices, since a man might be expected to look into the Gazette for notices of dissolution of partnerships, but not for notices by carriers of the limitation of their responsibility. In order to affect persons who have been in the habit of dealing with the partnership, with notice of its dissolution, it is incumbent on the persons dissolving to send notice of the dissolution, and the Gazette of itself will not, it is said, be evidence. The usual and most prudent course is to send circular letters to all with whom the parties had dealings. Where, in order to prove notice of dissolution, the defendants produced a written notice signed by them, which had afterwards been inserted in the Gazette, and proved that a similar advertisement had been inserted in the Morning Chronicle, and that the plaintiffs took in the latter paper, which the newsman stated to have been delivered in the usual course to some persons at the house of the plaintiffs, Lord Ellenborough left it to the jury to say, whether under all the circumstances of the case the plaintiffs had actually received notice of the dissolution. His lordship also ruled that the written notice of dissolution did not require a stamp. *Jenkins v. Blizzard*, 1 *Stark.* 418. *See Rowley v. Horne*, 3 *Bingh.* 2. 11 *East*, 144. (*n.*) But where the notice of dissolution was in the form of an agreement, Lord Kenyon ruled that it required an agreement stamp. *May v. Smith*, 1 *Esp.* 283. Where no notice had been inserted in the Gazette, but it appeared that the dissolution was generally known in the neighbourhood, Lord Kenyon said that to discharge the partner retiring, there must be a public advertisement in the Gazette, or at least the dissolution must be notorious to the public, and actual knowledge of it brought home to the creditor. *Gorham v. Thompson*, *Peake* 42, *b.* It seems not to be necessary, in giving the Gazette in evidence, to prove that it was bought of the Gazette printer, or where it came from. *Forsyth's case. Russ. & Ry.* C. C. R. 277. Where the plaintiff sued on a bill accepted by one of two partners in the name of the firm, and it appeared that, previously to the acceptance, a deed of dissolution had been prepared and transmitted by the plaintiff who was the attorney of one of the partners, Lord Ellenborough said, that whenever a communication has been made of the intention of the parties to dissolve a partnership, which is in the course of execution, the burthen is thrown on the other side of proving that the intention has been abandoned. *Paterson v. Zachariah*, 1 *Stark.* 715. A change in the checks of a banking house is sufficient notice of the dissolution of partnership, to those who have drawn checks on the new firm. *Barfoot v. Goodall*, 2 *Campb.* 147.

Partners — one partner cannot bind his copartner after committing an act of bankruptcy.] The committing an act of bankruptcy by one partner is a complete dissolution of the partnership, and the assignees and the solvent partner become tenants in common of the partnership property. *Fox v. Hanbury, Cowp.* 449. Therefore where two of three partners, after committing an act of bankruptcy, but before the issuing of a commission, indorsed a bill payable to the order of the firm, it was held that nothing passed by such indorsement. *Thomason v. Frere,* 10 *East,* 418. *See Lucy v. Woolcott,* 2 *D. & R.* 458. *ante, p.* 68. *and see post, Chap.* VI.

Partners — death of one partner.] In general death is a revocation of all express or implied authorities, but where A. one of three partners, drew a bill of exchange, in blank, on the partnership firm, payable to their order, and indorsed it and delivered it to a clerk, to be filled up for the use of the partnership, as the exigencies of business might require, according to the course of dealing; and after A.'s death, the clerk filled up the bill, inserting a date prior to A.'s death, and sent it into circulation, it was held that the surviving partners were liable as drawers to a *bonâ fide* indorsee for value, though no part of the value came to their hands. *Usher v. Dauncey,* 4 *Campb.* 97.

Partners in particular transactions.] A partner in a particular transaction cannot bind his copartner by giving bills or notes in their joint name, not for the purposes of the joint transaction. Thus, where Thomas, Hunter and Latham, not being general partners, undertook to accept bills drawn by Leake and List on them for money advanced by them to Thomas, on account of the ship Cecilia, in which they were all interested, and in order to accommodate Latham alone, Leake and List drew a bill in favour of the plaintiff, on Thomas, Hunter and Latham, which was accepted by Latham; Lord Ellenborough held that Leake and List could give no better title to the holder of the bill than they had themselves; that they could not draw for a general account, but for account of the ship only, and that they could not bind Thomas by drawing a bill upon him and the other defendants for an account unconnected with the ship. The plaintiff was nonsuited. *Williams v. Thomas,* 6 *Esp.* 18. Where A. and B. agreed to take a farm and pay C. the former occupier, for certain articles, by bills at three months, and C. afterwards, without the knowledge or consent of A. took from B. bills for the amount payable at six and twelve months, and accepted by himself in his own name and A.'s, it was held that B. had not implied authority to bind A., and that as he had not pursued

the express authority, A. was not bound. *Greenslade v. Dower*, 7 *B. & C.* 635.

Several persons, not partners.] Several persons, not partners, may together become parties to a bill or note, which will be joint or several, according to the terms of it, Thus, where a note beginning "I promise to pay," &c., was signed by two persons, it was ruled to be either joint or several. *March v. Ward, Peake*, 130. *Clerk v. Blackstock, Holt*, 474. *ante*, *p.* 18. Such a note requires only one stamp, if it were the bargain before it was issued that all should join. *Clerk v. Blackstock, Holt*, 474. Where a bill or note is payable to several, the right to transfer it is in the whole number, and one of them alone cannot transfer it. Thus, where a bill was drawn by father and son, not partners, payable to their own order, and the son alone indorsed it, Lord Mansfield thought such indorsement insufficient. A new trial, however, was granted, the court thinking that the father and son had made themselves partners as to this transaction. On the second trial, Lord Mansfield received evidence of the usage and understanding of the merchants and bankers of London, that the indorsement was bad, and the jury found a verdict for the defendant. *Carvick v. Vickery, Dougl.* 653. So where a bill is drawn upon several, an acceptance by one binds himself only. *B. N. P.* 270.

CHAPTER IV.

OF THE LIABILITIES OF PARTIES TO BILLS AND NOTES.

Liability of drawer.
How discharged.
By indulgence.
By taking substituted bill, or collateral security.
By compounding with the acceptor.
By holder making the acceptor his executor.
Not by time given to an accommodation acceptor.
Not by receiving part payment from the acceptor, or indorser.
Not by indulgence to acceptor, with his assent, or after promise to pay.
Liability of acceptor.
How discharged.
By release.
By waiver.
By substituted bill, or security, or giving time.
By giving time to drawer of accommodation bill.
By neglect to present the bill for payment.
By discharge in a foreign country.
Liability of the drawee, or other person, in consequence of a promise to pay.
Liability of the indorser, or party transferring a bill or note.
In general.
Of person transferring bill by delivery, without indorsement.
Of person delivering over bill by way of discount.
How discharged.
By indulgence.

In the present chapter, the liabilities of the drawer, acceptor, and indorser of a bill of exchange will be considered.

Liability of drawer.]—By the act of drawing a bill of exchange, the drawer undertakes that the bill, when presented to the drawee for acceptance, shall be accepted; when presented for payment, shall be paid. *See Dunn v. O'Keefe*, 5 *M. and S.* 290. In default of either of these events, he is liable immediately to pay, to the holder, the amount of the bill, and the expences incurred in consequence of such default. As one of the consequences of non-payment, the drawer is liable for re-exchange; and it is no defence, that, by the law of the country, where the drawee resides, payment of the bill is prohibited. *Mellish v. Simeon*, 2 *H. Bl.* 378. But it would be otherwise, if payment were prohibited by the laws of this country. *See Pollard v. Herries*, 3 *B. & P.* 340. *Touting v. Hubbard*, *Id.* 301. *and see post, Chap.* XIII.

The drawer of a bill, on the refusal of the acceptor to pay it, is only liable to pay interest from the period when he received notice of dishonor. *Walker v. Barnes*, 5 *Taunt.* 240. 1 *Marsh.* 36. *S. C.* To entitle the holder of an inland bill to recover the interest, it is not necessary for him to protest the bill. *Windle v. Andrews*, 2 *B. & A.* 696. *See post, Chap.* IX.

On the refusal of the drawee to accept, the drawer is liable to be sued immediately, before the bill becomes due. *Bright v. Purrier*, *B. N. P.* 269. 3 *East*, 483. *Melford v. Meyor*, *Dougl.* 54. But he has a reasonable time for payment of the bill, after notice of dishonor, and, therefore, when a bill was presented for payment on the 11th, a nd dishonoured, and on the 12th the drawer received notice of dishonor, and on the morning of the 13th tendered the amount of the bill, it was held that such tender was good. *Per Mansfield, C. J.*—"If the acceptor does not pay the bill when it is due, the drawer cannot find out by inspiration who is the holder, and, till he finds out that, he cannot pay the bill; when he has found out who is the holder, he is bound to pay the bill within a reasonable time; if he does not, he is liable to damages for not performing his contract: those damages are the interest on the bill." *Walker v. Barnes*, 5 *Taunt.* 240. 1 *Marsh.* 36. *S. C.*

By drawing a bill in blank, the party drawing it becomes liable, when the bill is filled up, to a *bonâ fide* holder, to any amount which the stamp will warrant. *Usher v. Dauncey*, 4 *Campb.* 97.

By drawing a bill, the drawer contracts a present debt, to be paid at a future time, and therefore a bill constitutes a good petitioning creditor's debt, though not due, and not indorsed to the creditor till after the bankruptcy. *Anon.* 2 *Wils.* 135. *Ex parte Thomas*, 1 *Atk.* 73. *post, Chap.* XIV. And so, though not indorsed till after the bankruptcy, it is proveable against the drawer. *Ex parte Deey*, 2 *Cox*, 423. *Macarty v. Barrow*, 2 *Str.* 949. 3 *Wils.* 16. 7 *East* 437 *(n) S. C. post, Chap.* XV.

If the holder accept a smaller sum from a third person, in

satisfaction of the debt of the drawer, it is a discharge of the latter. *Welby v. Drake*, 1 *C. & P.* 557.

Of drawer, how discharged—indulgence.]—Discharging, or giving time, to any of the parties to a bill, or note, is a discharge of every other party, who, upon paying the bill, or note, would be entitled to sue the party to whom such discharge, or time, has been given, unless the right to sue in such case resulted from facts out of ordinary course, as from the signatures being accommodation signatures. *Bayley*, 270. But a mere offer to give time to the acceptor, not acted upon, will not discharge the drawer. *Hewet v. Goodrich*, 2 *C. & P.* 468. And where the holder of a bill proposed to the acceptor, to give time for the payment of the residue, on receiving 100*l.* and the acceptor paid only 80*l.*, it was held, that this being a proposal to give time not complied with, did not discharge the other parties. *Badnall v. Samuel*, 3 *Price*, 521. Giving time to the acceptor, will discharge the drawer or indorser. In an action by the indorsee against the indorser of a bill, it appeared that payment having been refused, the plaintiff had commenced actions against the present defendant, and also against the acceptor, and having sued the latter to judgment, took out execution thereon; but, although the acceptor had sufficient to answer the execution, the plaintiff, at his instance, received 100*l.* in part payment of the bill, and took his bond, and warrant of attorney, as a security for the payment of the remainder by instalments, together with interest and costs. The plaintiff having been nonsuited, the court of C. P. refused a new trial. *English v. Darley*, 2 *Bos. & Pul.* 61. 3 *Esp.* 49, *S. C.* So, with regard to notes, in no case has it been determined, that the indorser is liable after the holder of the note has given time to the maker. *Per Buller J. Tindal v. Brown*, 1 *T. R.* 169. So, it is said by Lord Alvanley, that if the holder of a bill, without the knowledge of the other parties, give time to the acceptor, he cannot afterwards call on the other parties, without an injury to those to whom he has given time; in such case, therefore, those parties will be discharged. *Clark v. Devlin*, 3 *B. & P.* 365. Where notes, drawn by one Canning, to the order of the defendant, were indorsed by the latter for the accommodation of Canning, who deposited them with his bankers, as a security for advances, which were afterwards renewed without any communication with the defendant, the court of K. B. were of opinion, that the defendant was discharged; for, if notice had been given by the bankers, that they would not trust Canning any longer, the defendant might have taken measures for his own security. *Smith v. Becket*, 13 *East*, 187.

It seems, that the taking a cognovit from the acceptor, by

which execution may be had within the same time in which it might have been obtained, had no cognovit been given, will not discharge the drawer or indorser. Thus, in an action against the indorser of a bill, where the defence was, that the plaintiff had given time to the acceptor, by taking a *cognovit*, which gave three weeks' time, Abbott, C. J. said, "If this cognovit is put in and read, is that a giving time, within the meaning of the rule, because the party has brought his action against the acceptor, and by these means obtains judgment against him? Is there any decision which lays down, that if, after action brought, the party take a cognovit, that is a giving of time? As at present advised, I think this cognovit admissible in evidence without a stamp, but I am of opinion, that it is no answer to this action. The mischief of holding, that this discharged the other parties to a bill, would be infinite. Suppose the indorsee of a bill brought an action against the acceptor, who appeared and pleaded: if the indorsee did not file his replication so soon as he might do, it would be said that he gave time to the acceptor. The defence cannot be sustained." *Jay v. Warren*, 1 *C. & P.* 532. In an action by the indorsee against the indorser of a bill, the defendant pleaded the general issue, and, at the trial, it appeared, that after the action commenced, the plaintiff, who had sued the acceptor, took from him a warrant of attorney for the debt and costs, payable by instalments. It was contended for the plaintiff, that as the warrant of attorney was taken after action brought against the acceptor, and the defeazance was to pay by instalments, *all of which would become due before the time when judgment could, according to the common course, be obtained*, the defendant had sustained no injury, and, that, as the matter of defence arose after action brought, it could not be received in evidence under the general issue. Abbott, C. J. received the evidence, but reserved the point. The plaintiff attempted to prove, that the defendant knew, and assented to, the taking of the warrant of attorney. Upon that point, the evidence was contradictory, and the Lord Chief Justice left it to the jury to find for the plaintiff, if they believed that the defendant concurred or assented to the taking of the warrant of attorney; otherwise for the defendant. The jury found for the defendant, but on motion to enter a verdict for the plaintiff, the court of K. B. granted the rule, on the ground that the defence set up was not admissible under the general issue. *Lee v. Levy*, 4 *B. & C.* 390. 1 *C. & P.* 553. *S. C.*

With regard to what shall amount to indulgence or giving time, it is said by Lord Eldon, C. J., that as long as the holder is *passive*, all his remedies remain. *English v. Darley*, 2 *B. & P.* 62. So it is said by Lord Alvanley, C. J., that a man is not bound to seek his remedy against the acceptor, and if he

sign judgment against him, he will not be bound to prosecute that judgment, but he must take care that de does not give the acceptor a defence against the drawer. *Clark v. Devlin*, 3 *B. & P.* 365. After protest for non-payment, and notice to the drawer, or what is equivalent to notice, a right to sue the drawer attaches, and the holder is not bound to sue the acceptor, and may therefore forbear to sue him. *Per Eyre, C. J. Walwyn v. St. Quintin*, 1 *B. & P.* 655. Thus, when the holder of a bill, in reply to a letter representing the probability of the acceptor being able to pay at a future period, returned an answer in which he agreed not to press the acceptor, it was held that this letter amounted to a mere forbearance. *Id.* 652. A discharge by operation of law, as under the insolvent act, will not affect the remedy of the holder against other parties. *See English v. Darley*, 2 *B. & P.* 62. *Nadin v. Battie*, 5 *East*, 147. The holder of a bill having sued the acceptor to execution, the latter obtained his discharge under the Lords' act. The holder then sued the drawer, who after paying the bill, sued the acceptor and charged him in execution. It was held that this was regular, and that the acceptor having been charged in execution at the suit of the holder, and discharged under the Lords' act, was not a satisfaction as between the drawer and acceptor. *Macdonald v. Bovington*, 4 *T. R.* 825.

A varying of the liability of the acceptor, by agreement with the holder, will discharge the drawer. Thus, where in an action against the drawers of a bill, it appeared that they had become bankrupts, and that an agreement had been entered into between the holder, the assignees of the drawers, and the acceptor, by which the acceptor agreed with the assignees and the holder, to pay the amount of the bill, *provided he should not be called upon to pay more*; Lord Ellenborough was of opinion that this new agreement, by which the condition of the acceptor was varied, amounted to a waiver of the right of action against the drawers. *De la Torre v. Barclay*, 1 *Stark.* 7.

In order to render the indulgence or giving time a discharge, the agreement to give time must not be a mere *nudum pactum* without consideration, but such as may be enforced between the parties to it. In an action by the indorsees against the drawer of a bill, it appeared that the plaintiffs were the holders when the bill became due, and duly presented the same to the acceptor for payment, and wrote a letter to the defendant in due time, informing him of the dishonour, but that from the promise of the acceptor they expected the same would be shortly paid. Afterwards the acceptor applied to them for indulgence for some months. They in reply, wrote to him that they would give him the time, but that they should expect interest. The case was tried on the home circuit, before Burrough J., when it was contended for the defendant,

that this indulgence to the acceptor discharged the drawer; but the jury found a verdict for the plaintiffs. On motion to the court of K. B. for a new trial, the court held that as no fresh security was taken from the acceptor, the agreement of the plaintiffs to wait, without consideration, did not discharge the drawer, because the acceptor might, notwithstanding such agreement, be sued at the next instant, and that the understanding that interest should be paid by the acceptor made no difference. Rule refused. *Arundel Bank v. Goble, K. B.* 1817. *Chitty*, 379. *5th Edit.* 2 *Chitty Rep.* 365. *S. C. See also, Williams v. Whitaker*, 2 *Marsh.* 383. *Brickwood v. Anniss*, 5 *Taunt.* 614. 1 *Marsh.* 250. *S. C.* The authority of *Arundel Bank v. Goble* has been recognised in a very late case. The executrix of the acceptor of a bill, orally promised to pay the holder out of her private income, provided he would forbear to sue, which the plaintiff promised to do. In an action against the drawer it was contended that by this giving of time, the defendant had been discharged, but the Court of Common Pleas held, that as the promise of the executrix could not be enforced, there was no consideration for the holder's promise, and that the defendant was not discharged. *Per Best, C. J.* "The time for payment must be given by a contract that is binding on the holder of the bill; a contract without consideration is not binding on him; the delay in suing is, under such a contract, gratuitous; notwithstanding such contract, he may proceed against the acceptor when he pleases, or receive the amount of the bill from the drawers or indorsers. As the drawers and indorsers are not prevented from taking up the bill by such delay, their liability is not discharged by it; to hold them discharged under such circumstances would be to absolve them from their engagement without any reason for so doing. In the case of the partners of the *Arundel Bank v. Goble*, found in a note to *Chitty on Bills*, and the accuracy of which note is proved by my brother's report to us of what passed at the trial before him, that point is decided." *Philpot v. Briant*, 4 *Bingh.* 717.

If the holder of a note releases the payee, he does not thereby discharge the maker. *Carstairs v. Rolleston*, 5 *Taunt.* 551. 1 *Marsh.* 207. *S. C. Bayley*, 273. Though the note were an accommodation note, *Ibid. Mallet v. Thompson*, 6 *Esp.* 78. *see post*. Unless, perhaps, that fact were known to the releasor when he gave the release, *Ibid. Bayley*, 273.

It has been held, that giving time to the acceptor after judgment obtained against the drawer, does not discharge the latter. *Pole v. Ford*, 2 *Chitty*, 125.

Of drawer—how discharged by indulgence—taking substituted bill, or collateral security.] If the holder of a bill, without the consent of the other parties, takes another bill from the ac-

ceptor instead of payment, it is a discharge to the other parties, unless it be taken merely as a collateral security. The holders of a bill upon its becoming due, agreed to receive from the acceptor half the amount in cash, and to draw a bill on him for the remainder payable at a short date, which he accepted, and that until the last-mentioned bill was paid, the plaintiffs should keep the original bill in their hands as a security. Lord Ellenborough at the trial, thought this was merely a mode of getting payment without any injurious laches on the part of the plaintiffs, and the plaintiffs had a verdict; but on a motion for a new trial, his Lordship and the rest of the court held, that the defendants (the indorsers) were discharged. *Per Lord Ellenborough*, "How can a man be said not to be injured, if his means of suing be abridged by the act of another? If the plaintiffs, holders of the bill, had called immediately upon the defendants for payment, as soon as the bill was dishonoured, they might immediately have sued the acceptor, and the other parties on the bill. I had some doubts at the trial, but am now inclined to think that time was given. The holder has the dominion of the bill at the time; he may make what arrangements he pleases with the acceptor, but he does that at his peril, and if he thereby alter the situation of any other person on the bill, to the prejudice of that person, he cannot afterwards proceed against him. As to the taking part payment, no person can object to it, because it is in aid of all the others who are liable upon the bill; but here the holder did something more; he took a new bill from the acceptor, and was to keep the original bill till the other was paid. This is an agreement that in the meantime the original bill should not be enforced; such is at least the effect of the agreement, and therefore I think time was given." *Gould v. Robson*, 8 *East*, 576. But where the second bill is a mere collateral security, the taking it will not operate as a discharge, as in the following case. A bill having been dishonored, the acceptor transmitted a new bill for a larger amount to the payee, but had not any communication with him respecting the first. The payee discounted the second bill with the holder of the first, which he received back as part of the amount, and afterwards for a valuable consideration indorsed to the plaintiff. It was held, that the second bill was merely a collateral security, and that the receipt of it by the payee did not amount to giving time to the acceptor of the first bill, so as to exonerate the drawer. *Pring v. Clarkson*, 1 *B. & C.* 14. 2 *D. & R.* 78. *S. C.* So where B. being indebted to A. procured C. to join with him in giving a joint and several promissory note for the amount, and afterwards having become further indebted, and being pressed by A. for further security, by deed, (reciting the debt, and that for a part, a note had been given by him and C., and that A. having demanded payment of part of the debt, B. had requested

him to accept a further security) assigned to A. all his household goods, &c. as a *further* security, with a proviso that he should not be deprived of the possession of the property assigned, until after three days' notice; it was held that this did not extinguish or suspend the remedy on the note against C. *Twopenny v. Young*, 3 *B. & C.* 208. 5 *D. & R.* 259. *S. C. See Pothier, pl.* 189. *de la novation.*

In the foregoing cases the question was, whether the drawer was discharged by the holder taking a substituted bill or other security from the acceptor; in the following, the point was, whether one of several drawers would be discharged by the holder taking the several notes of one of the other drawers, and renewing them. The defendant's partners, after drawing the bill dissolved partnership, and the holder being told that Bickley, one of the partners, was, by agreement between the partners, to provide for the bill, took three notes of Bickley for the amount *reserving strictly the security of the three partners.* Two of these notes were dishonored and were taken up by Bickley by means of other bills, which were also dishonored. The third note remained in the holder's hands. In an action on the bill against all the drawers, it was contended for the defendants, that the holder took the notes of Bickley as a satisfaction for the bill, and that at all events they were not liable for the amount, for which the holder had received the substituted bills from Bickley, but the court of K. B. held the holder entitled to recover the whole amount. *Per Holroyd, J.* "The dishonor of the original bill gave a right of action against all the three partners, and the circumstances of a creditor giving time to one of three joint debtors will not discharge the others, nor even, strictly speaking, suspend his right of action against them. I think that the giving of the three notes by Bickley will not operate as a satisfaction of the joint debt; for in the first place, it is not a satisfaction of a higher nature, and in the second place there was an express reservation of the plaintiff's claim against all the three. And the agreement between the three partners cannot vary the holder's right, even though it was communicated to him." *Bedford v. Deakin*, 2 *B. & A.* 210. 2 *Stark.* 178. *S. C.*

Of drawer — how discharged — by compounding with the acceptor, &c.] Although if the acceptor of a bill become bankrupt, proving under his commission and receiving the dividends will be no discharge of the drawer or indorsers; *English v. Darley*, 2 *B. & P.* 62. and *see post*; yet, if he becomes insolvent, and the holder compounds with him for a certain sum and releases him from the rest, it is a discharge to the other parties. Thus, where the agent of the holders of a bill, on the acceptors becoming insolvent, signed a composition deed upon receiving a dividend in full discharge of the estate of the

acceptors (conceiving that the composition, which took place at Hamburgh, was in the nature of a bankruptcy,) it was held that the drawer was thereby discharged. *Per Lord Eldon, C.* "The law is not disputed. It was held by Lord Thurlow, (*Ex parte Smith*, 1 *Co. B. L.* 168. 171.) upon great deliberation, that, if a person, having the security of drawer or acceptor, with effects (a distinction, much to be regretted, having given very mischievous authenticity to accommodation paper) gives the acceptor time, and much more if the drawer [holder], fully discharges the acceptor by composition, the holder can no longer make a demand upon the drawer, whether solvent or not; for this reason, that if the drawer could come upon the acceptor afterwards, the acceptor does not receive any benefit by the composition. The nature of the contract must therefore be, that the holder shall so deal with the bill, that no third person shall come upon the acceptor in consequence of his act. I remember Lord Thurlow said he had consulted the judges upon that case. The decision is, therefore, of very high authority. Lord Rosslyn was struck with this consideration, that if the holder did all he could substantially do for the benefit of the persons whose names were upon the bill, that was all that could be expected; and held, that he should, if he really acted for the benefit of the other parties by taking a composition from the acceptor, go on against the drawer. But the misfortune of that is, that the other parties have a right by law, to consider what is for their benefit and are the judges of that, and that has been carried so far, that the actual bankruptcy of the acceptor does not dispense with the necessity of notice to the drawer." *Ex parte Wilson*, 11 *Ves.* 410.

The following is the case referred to by Lord Eldon. The indorser of certain bills and notes became bankrupt, and the holder proved the amount under his commission, and afterwards compounded with and discharged the acceptor without the consent or privity of the assignees of the indorser, and the Lord Chancellor held that the indorser's estate was thereby discharged and ordered the proof to be expunged. *Ex parte Smith*, 3 *Br. C. C.* 1. So where an action was brought by several partners as indorsees of a promissory note against the defendant as indorser, and it appeared in evidence that one of the partners had discharged a prior indorser by a deed of composition, it was held that such deed operated as a release to the defendant. *Ellison v. Dezell, Bristol Sum. Ass. M. S.* 1 *Selw. N. P.* 348. 4*th Ed.*

Of drawer — how discharged — by holder making acceptor his executor.] If a creditor constitutes his debtor his executor, this is a release or discharge of the debt, whether the executor acts or not. 2 *Bl. Com.* 511, 12. *Wankford v. Wankford*, 1 *Salk.*

299. Therefore, if the holder of a bill makes the acceptor his executor and dies, this discharge will operate as a discharge of the drawer and prior indorsers. *Chitty*, 345. *7th Ed. Poth. pl.* 191.

Of drawer — how discharged — not by time given to an accommodation acceptor.] The ground of holding the drawer discharged by indulgence to the acceptor being that the indulgence would otherwise be nugatory since the holder might sue the drawer, who must sue the acceptor, or himself be a sufferer by the act of the holder, it has been held that in cases of accommodation acceptances, the giving time or discharging the acceptor does not discharge the drawer, who on being sued, will have no right to resort to the acceptor. Thus, where in an action against the drawer of a bill, accepted for the accommodation of the drawer, it appeared that the holder had given time to the acceptor, Lord Ellenborough ruled that under these circumstances the defendant was not discharged. "The drawer of an accommodation bill," said his lordship, "must be considered as the principal debtor, and the acceptor only in the light of a surety. (*See ante, p.* 2.) The reason why notice of the dishonour of a bill must, in general, be given to the drawer of a bill, is that he may *recoup* himself by withdrawing his effects from the hands of the acceptor, and he is discharged by time being given to the acceptor without his consent, because his remedy over against the acceptor may thus be materially affected. But where the bill is accepted merely for the accommodation of the drawer, he has no effects to withdraw, and no remedy to pursue when compelled to pay. He therefore suffers no injury either by want of notice or by time being given to the acceptor, and in an action on the bill he cannot defend himself on either of those grounds." *Collott v. Haigh*, 3 *Campb.* 281. *See Ex parte Wilson*, 11 *Ves.* 411. So it was held that the holder for value of a bill, accepted for the accommodation of the drawer, might prove the bill under a commission against the drawer, notwithstanding he had taken security from the acceptor and given him time for payment. *Ex parte Holden, Co. B. L.* 167. *and see Lewis v. Jones*, 4 *B. & C.* 506. Upon the same principle, where the acceptor is the agent of the drawer, the latter will not be discharged by time given to the former. In an action for goods sold, it appeared that the plaintiffs were to be paid for the goods by a bill on one Aaron, an agent of the defendant in London; Aaron accepted the bill, here when due, had produce in his hands consigned to him by the defendant, more than sufficient to satisfy the bill, but there was no market for it at the time. He stated to the plaintiffs that he was unable to pay it, and they twice allowed him to renew it, without informing the defendant: Aaron afterwards failed, with money

of the defendant in his hands more than sufficient to pay the bill. Lord Ellenborough was of opinion that Aaron was only in the nature of a surety, and remarked that as he was not in cash to pay the bill when it became due, it was rather in favour of the defendant to allow it to be renewed. The debt was originally due to the defendant, and the security taken from his agent could be no extinction of it. It was impossible to say that the purchaser of goods could be discharged under these circumstances, by want of notice, like the drawer of a bill of exchange. The plaintiffs had a verdict, which on a motion for a new trial was approved of by the court. *Clarke v. Noel*, 3 *Campb.* 411.

Of drawer — how discharged — not by receiving part payment from acceptor or indorser.] It was formerly held that if the holder of a bill received any part of the money from the acceptor, or if the holder of a note received any part of it from the maker, the drawer and indorsers in the one case, and the indorsers in the other, were discharged on the ground that the holder thereby gave credit to the acceptor or maker only. *Tassell v. Lewis*, 1 *Lord Raym.* 743. *Kellock v. Robinson*, 2 *Str.* 745. But it has since been held that the drawer is not discharged by the holder receiving part payment either from the acceptor or from an indorser, for it is only in aid of the parties who are liable upon the bill. *Gould v. Robson*, 8 *East*, 580. *Walwyn v. St. Quintin*, 1 *B. & P.* 656. *Hewett v. Goodrick*, 2 *C. & P.* 468. So it has been held that entering up judgment on a warrant of attorney, against one of the makers of a joint and several promissory note, and levying part under a *fi. fa.* is not a discharge to the other maker. *Ayrey v. Davenport*, 2 *N. R.* 474.

Of the drawer — how discharged — not by indulgence to acceptor, with his assent, or after promise to pay.] The drawer or indorser will not be discharged by indulgence given to any other party, if it be given with the assent of the drawer or indorser; or if after notice of its having been given, he promise to pay the bill. The acceptor of a bill offered to give the holder a warrant of attorney, payable by instalments, and the latter informed the drawer of the fact, who said, "You may do as you like, for I have had no notice of the non-payment." The drawer in fact had received notice, and the holder took the warrant of attorney. Under these circumstances, the court of C. P. were of opinion that the drawer was not discharged. *Per Lord Alvanley*, "In this case the drawer had complete knowledge of the non-payment of the bill, and of the holder's intention to take a warrant of attorney payable by instalments; yet upon this latter circumstance being mentioned to him, he does not say, 'If you give time to the ac-

ceptor I will have nothing more to do with it;' but he suffers him to go away without making any objection. Such conduct amounts to a tacit consent to the intended agreement between the holder and the acceptor." *Clark v. Devlin*, 3 *B. & P.* 363. So where the holder of a bill gave time to the acceptor, but the drawer, three months after the bill was due, said to the holder (having before told the acceptor that he was glad time had been given him) "I know I am liable, and if Jones (the acceptor) does not pay it, I will," it was held that he still was liable. The court said that the defendant had made the promise with a full knowledge of the circumstances, and could not now defend himself on the ground of his ignorance of the law, when he made the promise. *Stevens v. Lynch*, 12 *East*, 38. 2 *Campb.* 332. *S. C.* But where the indorser of a bill, on being told that the holder had taken up the bill by another bill, approved of it, and said, "it was the best thing that could be done," Lord Ellenborough held the indorser discharged. "The plaintiff," (the indorser) said his Lordship, "does not appear to have recognized the act of the defendants, (the holders). His approbation of what had been done must refer to the acceptor of the bill, to whom it was evidently advantageous. The holders had no right to make terms with the acceptor, and by so doing they discharged the indorser." *Withall v. Masterman*, 2 *Campb.* 179.

Liability of acceptor.] Where a bill is accepted generally, the acceptor is liable to pay it according to the terms of the bill. Where it is accepted conditionally, he is liable to pay it according to the terms of the bill, varied by the conditions in the acceptance. And where a bill is accepted, to which, before acceptance, the indorser has annexed a condition, the acceptor is bound to pay it according to the terms of the bill, varied by the terms of the conditional indorsement. *Robertson v. Kensington*, 4 *Taunt.* 30. The contract of the acceptor is only to pay the sum specified in the bill, and interest according to the legal rate of interest where it is due. *Per Ld. Ellenborough, Woolsey v. Crawford*, 2 *Campb.* 445. And, therefore, he is not liable to pay re-exchange. *Ibid. Napier v. Schneider*, 12 *East*, 420. *See post, Chap.* XIII. *and Note.* An accommodation acceptor is liable to a person who took the bill for value, although with notice of its being an accommodation acceptance. *Smith v. Knox*, 3 *Esp.* 46. *Fentum v. Pocock*, 1 *Marsh.* 16.

The drawee by accepting a bill is concluded from questioning the handwriting of the drawer, and therefore, if the drawer's name is forged he is still liable to pay the bill. *Smith v. Chester*, 1 *T. R.* 655. *Bass v. Clive*, 4 *M. & S.* 15, *and see post, Chap.* XII. And where the drawee of a bill, on being asked if the acceptance is his own hand-writing, answers that

it is, and that it will be duly paid, he cannot afterwards set up the forging of his name, for he has accredited the bill, and induced a third person to take it. *Leach v. Buchanan*, 4 *Esp.* 226, *and see post.*

The acceptor of a bill is liable to pay it immediately upon its becoming due, and if he neglect to do so, he cannot plead a tender after the day of payment and before action brought, for a plea of tender is in strictness applicable only to cases where the party pleading it has never been guilty of any breach of his contract. *Hume v. Peploe*, 8 *East*, 168.

Liability of acceptor—how discharged—Release.] The liability of the acceptor may be discharged by a release from the holder of the bill, or from any other party to the bill, as between himself and the acceptor. Thus, where in an action by the payee against the drawer of a bill, a release in the common form was executed by the defendant to the acceptor, for the purpose of making the latter a competent witness; Lord Ellenborough held, that the release being of all causes of action, for or by reason of any matter or thing which had happened down to the present moment, would discharge the acceptor from all liability to the drawer. *Scott v. Lifford*, 1 *Campb.* 250. But where in an action against the acceptor of a bill the defendant pleaded a release after the bill drawn and before the acceptance by the defendant, it was adjudged no plea, for the release was before the defendant was chargeable. *Drage v. Netter*, 1 *Ld. Raym.* 65. A release by the holder to the acceptor will be no defence to an action by a subsequent indorsee, for valuable consideration and without notice. *Dod v. Edwards*, 2 *C. & P.* 602.

Liability of acceptor how discharged—waiver.] The liability of an acceptor differs much from that of a drawer. He can only be discharged by an express agreement among the parties that he shall be so; by an express renunciation by the holder, of his liability, by payment, or by neglect on the part of the holder to get paid when he had the proper means of payment in his power. *Per Littledale, J. Farquhar v. Southey*, 1 *Moo. & Mal.* 16. Thus, where in an action against an acceptor, it appeared that the plaintiff had agreed to consider the acceptance at an end, and had written in his books "Mr. P's acceptance at annulled," and had kept the bill from 1772 to 1775, without calling on the acceptor; a verdict was found for the defendant. *Walpole v. Pulteney, cited Dougl.* 237. 248. 4*th Ed.* So where the indorsee of a bill arrested the acceptor, but finding that it was an accommodation acceptance, took a security from the drawer, and sent word to the acceptor that he had settled with the drawer and he need not trouble

himself any further; it was held that the acceptor could not afterwards be sued. *Black v. Peele, Ibid.* So it has been held that a promise to accept, in consideration that goods shall be consigned to the acceptor to answer the bill, together with a policy of insurance, is discharged by the holder of the bill taking to the goods, and selling them himself. *Mason v. Hunt, Dougl.* 284. 297. *4th Ed.*

But where the holder of an accommodation bill, on its becoming due, applied to the drawer and pressed him for payment, and received interest upon the bill from him, and the principal of another bill drawn under similar circumstances, and suffered several years to elapse without calling on the acceptor, the court held that the acceptor was not discharged. *Per Willes, J.* "I do not think silence can discharge the acceptor. No case of a tacit discharge has been produced. In *Black v. Peele* the discharge was in express words. In *Walpole v. Pulteney* the case was put upon the entry in the books, being an express discharge." *Dingwall v. Dunster, Dougl.* 235. 247. *4th Ed. See also Byrn v. Godfrey,* 4 *Ves.* 8. The drawer of a bill, when it was due, paid part to the holder, and indorsed a promise to pay the rest in three months. After a lapse of three years the holder sued the acceptor. Lord Mansfield nonsuited the plaintiff. On an application for a new trial, his Lordship said, the doubt was whether the question should not have been left to the Jury, and *per Buller, J.*, "I rather think the case should have gone to the jury, but I am not therefore of opinion that there ought to be a new trial; the indorsement could not have been meant as an additional security, for the drawer was equally liable before; I should have left the question to the jury, but with very strong observations, and as the demand is so small I do not think there ought to be a new trial." *Ellis v. Galindo, cited Dougl.* 250. (*n*). *4th Ed.* In an action by the indorsee against the acceptor of a bill no demand was proved till near three months after the bill was due, and when the drawer had become insolvent. *Per Ld. Mansfield, C. J.* "The acceptor of a bill or maker of a note always remains liable. The acceptance is proof of having assets in his hands, and he ought never to part with them unless he be sure that the bill is paid by the drawer." *Anderson v. Cleveland,* 13 *East,* 430. (*n*). 1 *Esp. Dig. N. P.* 58. *4th Ed. S. C.*

In an action by the indorsee against the acceptor of a bill, it appeared, that when the bill was presented for payment, the defendant said, that the acceptance was a forgery, and offered to make an affidavit to that fact. The affidavit had been drawn and engrossed, but not sworn. The plaintiff, at first, agreed not to sue the defendant, if he would make the affidavit, but afterwards refused to receive it. *Per Lord Kenyon,* "Had the defendant sworn the affidavit, I should have held, that he had discharged himself of the present action, though such affi-

davit had been false. But, as the defendant has not sworn the affidavit, he still remains liable, unless he can prove the acceptance a forgery." *Stevens v. Thacker, Peake*, 187. In an action against the acceptor of a bill, it was proved, that the plaintiffs, the holders, who knew that the acceptance was an accommodation one, and had in their hands property of the drawer, from which they expected to be satisfied, said, at a meeting of the defendant's creditors, "they looked to the drawer, and should not come upon the acceptors of the bill," in consequence of which the defendants assigned the whole of their property to the creditors. Lord Ellenborough directed the jury to consider, whether the language employed by the plaintiffs amounted to an absolute, unconditional, renunciation by them, as holders of the bill, of all claims in respect of it upon the defendants, as acceptors, whereby the latter had entered into an arrangement with their creditors; in that case, the acceptors were discharged from their liability. The holders had made their election, and could now only proceed against the drawer. On the other hand, if the words only imported, that they looked to the drawer in the first instance, that it was not then necessary to come upon the acceptors, and that they should not resort to them if satisfaction could be obtained from another quarter; they did not waive their remedy by this conditional promise, and the acceptor still continued liable, until the bill should be actually paid. The jury found for the plaintiffs. *Whatley v. Tricker*, 1 *Campb.* 35. In an action against an acceptor, it was proposed to prove, for the defendant, that the plaintiff, the holder, being discharged under the insolvent act, had delivered in a blank schedule, whereby, as contended, he had acknowledged that the bill was satisfied. But *per Lord Ellenborough*, "The mere omission to insert the bill in his schedule, is not enough to prove, that the amount was not then due; and we have positive evidence that it was accepted for a full consideration." *Hart v. Newman*, 3 *Campb.* 13.

In an action against the acceptor, it was proved for the defendant, that on his attorney applying to the plaintiff, to know what the amount of his claim was, the plaintiff stated, he had judgments against the defendant on warrants of attorney to the amount of 700*l.*; that as to the bill, he should look to the drawer for it; that the sum of 160*l.* was due upon it, and that he held the warrant of attorney of an Irish baronet for the amount, and that he wanted no more from the defendant than was included in the warrants of attorney. In consequence of this, the attorney paid all but the bill, which he should not otherwise have done. *Per Lord Ellenborough*, "If the holder does not expressly renounce all claim upon the security, it still remains valid in point of law. If the party were to forego a bill in equity on that account, it would be a good consideration for a renunciation of part of his claim, but the ground of re-

nunciation must be distinctly proved. The plaintiff, probably, might suppose that the drawer would pay the bill, and that he should not have occasion to call upon the defendant. I am of opinion, that, in point of law the circumstances do not amount to an express renunciation, and nothing short of that will be sufficient to discharge the defendant." *Parker v. Leigh*, 2 *Stark.* 228. *See also Adams v. Gregg*, 2 *Stark.* 533. The defendants were sued as acceptors of two bills. The plaintiffs, the indorsers, were bankers. The bills were accepted for the accommodation of one Leader. The plaintiffs never made any demand on the defendants till after Leader's bankruptcy, three years after one bill became due, and four years after the other. The defendants, two years after the second bill became due, opened a banking account with the plaintiffs, but the plaintiffs did not then inform them that they held these bills against them. The balances which the defendants had in the hands of the plaintiffs, seldom exceeded 300*l.* (the bills were 500*l.* each), but, on two occasions, they had, for two or three days, balances to their credit of more than 1000*l.* on which the plaintiffs made no claim. The plaintiffs debited Leader up to the time of his bankruptcy, with interest on the bills, but never carried the bills themselves to the debit of his account. *Per Littledale, J.*—"The only question I can leave to the jury is, whether they can collect from the dealings between the parties, evidence that the plaintiffs ever entered into an agreement to discharge the defendants, or expressly renounced all intention of holding them liable. If the jury were satisfied of the existence of either of these facts, their verdict should be for the defendants; if otherwise, for the plaintiffs." Verdict for the plaintiffs. *Farquhar v. Southey*, 1 *Moo. & Mal.* 14.

Of acceptor and maker,—how discharged or suspended, by substituted bill, or security, or giving time.] The liability of the acceptor of a bill, or of the maker of a note, may be discharged, or suspended, by the holder's receiving a substituted bill, or other security. Thus, taking a new bill from the acceptor the original bill to be kept as a security, operates as an agreement, that, in the meantime, the original bill shall not be enforced. *Per Lord Ellenborough, Gould v. Robson*, 8 *East*, 580, *and see Price v. Clarkson*, 1 *B. & C.* 14. *ante, p.* 78. Where, on a bill becoming due, and action brought, it was agreed between the holder and the acceptor, that the latter should pay the costs incurred, give a warrant of attorney for the debt, and renew the bill, and accordingly the acceptor gave the warrant of attorney, and accepted another bill for the amount, (which the holder paid away, and which was still outstanding) but did not pay the costs; in an action on the first bill, Lord Ellenborough ruled, first, that as judgment had not been entered up, the warrant of attorney was only a collateral security, and did

not merge the debt; and, secondly, that the facts above stated, furnished no defence, since the costs not having been paid, it was like accord without satisfaction. *Norris v. Aylett*, 2 *Campb.* 328. But where, in a similar case, the second bill had been paid when due, but the defendant had neglected to pay the costs of the warrant of attorney, according to the agreement between the parties, it was held, by the court of Common Pleas, that, by the payment of the second bill, the right to sue upon the first was wholly extinguished, and that the plaintiff could only recover the amount of the costs. *Dillon v. Rimmer*, 7 *B. Moore*, 427. 1 *Bingh.* 100. *S. C.*

Where a person having funds in his hands belonging to the drawer of a bill, accepted for the accommodation of the drawer, took up the bill, to prevent proceedings against the drawer, on condition that he should, if necessary, stand in the situation of the then holder, and he had also declared, that the acceptor should not be troubled; in an action, brought in the name of the holder, against the acceptor, it was held, that the defendant had not been discharged. *Adams v. Gregg*, 2 *Stark.* 531.

Where a bill had been accepted by two persons in partnership, and the holder, when it became due, took another bill for the same amount from one of the partners only, Lord Kenyon held, that the holder, by taking the sole bill of the other partner, had discharged his co-partner. *Evans v. Drummond*, 4 *Esp.* 91. *and see Reed v. White*, 5 *Esp.* 122. But it has been said by Holroyd, J. that the circumstance of a creditor giving time to one of several joint debtors, will not discharge the others. *Bedford v. Deakin*, 2 *B. & A.* 217. *S. C.* 2 *Stark.* 180. *ante*, *p.* 79.

Compounding with the principal, discharges the surety who has joined him in a joint and several promissory note. An action was brought against the defendant only, on a joint and several promissory note, made by the defendant, and one Stoddart. Plea, *non assumpsit*. The defendant gave in evidence an agreement in writing, entered into by the plaintiff, with the assignees of Stoddart, then a bankrupt, to receive from them 600*l.* in lieu of 883*l.* actually due from the bankrupt on this note, and on other transactions. The defendant obtained a verdict. On motion to set it aside, it was resisted on the part of the defendant, on the ground that the agreement put an end to the plaintiff's recovery on the note, that the principal could not be discharged without discharging the surety also. On the part of the plaintiff, it was urged, that it was not the meaning of the agreement, that the defendant should be discharged. "But," *per Lord Mansfield*, "the plaintiff was party to the agreement, and we cannot receive parol evidence to explain it. Whatever might be the intention of the parties, the principal cannot be released without its operating for the benefit of the surety." Rule discharged. *Garrett v. Jule*,

B. R. M. 22 *G.* 3. *M. S. Selw. N. P.* 369. *4th edit.* But, where several persons make a promissory note, as joint sureties, the discharge of one of the sureties by a composition, will not operate as a discharge of the others. *Ex parte Gifford*, 6 *Ves.* 805. *See Dunn v. Slee, Holt*, 403.

Of acceptor—how discharged—giving time to drawer of an accommodation bill.] Whether the holder of a bill, accepted for the accommodation of the drawer, by giving time to th drawer, discharges the acceptor, seems not to be well settled. (*See Note* 16.) Where, in such a case, the holder received part payment from the drawer, and gave him time to pay the remainder, without the concurrence of the acceptor, Lord Ellenborough said, that this being an accommodation bill within the knowledge of all the parties, the acceptor could only be considered a surety for the drawer, and in the case of simple contracts, the surety is discharged by time being given, without his concurrence, to the principal. Plaintiff nonsuited. *Laxton v. Peat*, 2 *Campb.* 185. Abbott, C. J. in the case of *Adams v. Gregg*, 2 *Star.* 533, seemed to be of the same opinion, though the circumstance of the case did not call upon him to express it. He there said, "If he, (the holder) had discharged himself from suing Holmes, (the drawer) who was to be considered as the principal, the present action could not have been brought against the surety," (the accommodation acceptor.) So, also, in *Collot v. Haigh*, 3 *Campb.* 281, *ante*, *p.* 81, Lord Ellenborough treated the drawer as the principal, and the accommodation acceptor as the surety. *And see Hill v. Read, Dow. & Ry. N. P. C.* 26.

But the authority of *Laxton v. Peat* has been frequently doubted. Thus, it was said by Mansfield, C. J. that, except in the above cited case, it never was known that any thing passing between other parties, could discharge an acceptor. *Raggett v. Axmore*, 4 *Taunt.* 30. So, it was ruled by Lord Eldon, C. J. that giving time to the drawer of a bill, accepted for the accommodation of the drawer, did not discharge the acceptor. *Smith v. Knox*, 3 *Esp.* 46. Where the defence was, time given to the drawer, (the plaintiff knowing it to be an accommodation bill,) but it also appeared, that on the bill becoming due, it had been presented to the acceptor for payment, who promised to pay it, Gibbs, C. J. said, that admitting *Laxton v. Peat* to be law, of which grave doubts have been entertained, this case might be distinguished. Lord Ellenborough's decision proceeded upon the ground, that the drawer, according to the understanding of the different parties to the bill, was considered as primarily liable, and was, in the first instance, looked to for payment. But here payment is demanded from the acceptor when the bill becomes due, and he then promises to pay it. This shews that he was held liable, as in the common case of the acceptor of a bill of exchange, and he is

not discharged by time given, under these circumstances, to the drawer. *Kerrison v. Cooke*, 3 *Campb.* 362. The plaintiff took a bill, without notice that it was accepted for the accommodation of the drawer. When due, it was presented for payment, and refused, and the plaintiff was then informed, that it was an accommodation bill. The plaintiff afterwards received part of the amount from the drawer, and took a cognovit from him for the remainder, payable at a future day. Under the direction of Mansfield, C. J. there was a verdict for the plaintiff, which the court of C. P. refused to set aside. *Per Mansfield, C. J.*—"It is impossible for us to consider the acceptor of an accommodation bill in the light of a surety for the payment by the drawer; and we cannot, therefore, say that he is discharged by the indulgence shewn to the drawer. One might find here a very important distinction between this case and the case decided by Lord Ellenborough, namely, that here the person taking the bill did not, at the time that he took it, know that it was an accommodation bill; and if he did not then know it, what does it signify what came to his knowledge afterwards, if he took the bill for a valuable consideration? But it is better not to rest this case on that foundation, for, as it appears to me, if the holder had known in the clearest manner, at the time of his taking the bill, that it was merely an accommodation bill, it would make no manner of difference; for he who accepts a bill, whether for value or to serve a friend, makes himself, in all events, liable as acceptor, and nothing can discharge him but payment or release." *Fentum v. Pocock*, 5 *Taunt.* 192. 1 *Marsh.* 14. *S. C.*

Upon the same principle it has been held that a covenant by the holder not to sue the payee of an accommodation note does not discharge the maker. *Per Lord Ellenborough*, "It is true that the plaintiff recovering on the defendant in this case, the latter may have his remedy over against the payee, but it will be for money paid to his use at the defendant's suit; the payment creates a new debt, but the old debt is satisfied as between the payee and the plaintiff." *Mallett v. Thompson*, 5 *Esp.* 178. *see also Carstairs v. Rolleston*, 5 *Taunt.* 551. 1 *Marsh.* 207. *S. C.*

Liability of acceptor, whether discharged by neglect to present the bill for payment.] It will be seen from the cases already cited, *ante*, p. 84, that a mere neglect on the part of the holder to present a bill, accepted generally, for payment, will not discharge the acceptor, but cases have arisen in which it has been made a question, whether the neglect to present a bill accepted, payable at a banker's, will have that effect. A bill was accepted (before the 1 & 2 Geo. 4. c. 78.), payable at a banker's. It became due in February, 1813, but was never presented at the banker's. In May or June, 1814,

the acceptor wrote requesting that the bill might be returned to him, but the holder informed him it had been mislaid. The bill was afterwards discovered. In November 1814, the bankers failed, having had a balance due to the acceptor, sufficient to pay the bill, from the time of its becoming due to the time of their bankruptcy. Under these circumstances the court of K. B. were of opinion that the acceptor was not discharged. They thought that as the acceptor had notice that the bill was mislaid, he might have withdrawn the balance which he kept at his banker's. *Sebag v. Abitbol*, 4 *M. & S.* 462. After the decision of *Rowe v. Young*, 2 *B. & B.* 165. *see post*, and before the passing of 1 & 2 Geo. 4. c. 78. a bill was accepted payable "at Messrs. P. and H., bankers, London." The bill was not presented for payment at Messrs. P. and H., till several days after it became due. The court, without saying what effect the proof of an actual loss sustained by the acceptor, in consequence of an omission to present, would have had, held that he clearly was not exonerated in the present case, where no injury was proved to have arisen from what had occurred. *Rhodes v. Gent*, 5 *B. & A.* 244. After the passing of 1 & 2 Geo. 4. c. 78. a bill was accepted payable at M. & Co.'s bankers, (which since that act is a general acceptance), and when due was not presented there. The bankers afterwards failed. The acceptor, at the time of the bill becoming due, and of the banker's failure, had a balance in their hands sufficient to pay the bill. The court held the acceptor still liable. The law did not oblige the holder to present the bill at M. and Co.'s, and it could not therefore be said, that he had been guilty of laches because he omitted to do so. *Turner v. Hayden*, 4 *B. & C.* 1. But now by stat. 1 & 2 Geo. 4. c. 78. the acceptor of a bill accepted payable at a banker's house or other place only, and not otherwise or elsewhere, shall not be liable to pay the said bill except in default of payment, when such payment shall have been first duly demanded at such banker's house or other place. Whether, where a bill, since the 1 & 2 Geo. 4. c. 78. is accepted at a banker's or other place, and not otherwise or elsewhere, the acceptor is discharged by the holder neglecting to present it at that place upon its becoming due, has not been determined. If the term, "*duly* demanded," in the statute should be held to mean such a demand as would be sufficient to charge the drawer or indorser, the neglect would, as it seems, discharge the acceptor; but if the statute merely directs a demand at the banker's or other place, before action brought against the acceptor, the neglect would not as it seems, operate as a discharge. *See Rhodes v. Gent*, 5 *B. & A.* 244.

Liability of acceptor — how discharged — by discharge in a foreign country.] Where a bill is drawn or accepted in a foreign country, the drawer or acceptor will be held discharged

here, if legally discharged there. Thus where the plaintiff accepted a bill at Leghorn, where the law is, that if the drawer fails and the acceptor has not sufficient effects of his in his hands at the time of the acceptance, the acceptance becomes void, and the plaintiff on these grounds had instituted a suit at Leghorn, and by sentence his acceptance had been vacated; on an action brought here, and bill filed for injunction and relief, King C. was clearly of opinion that the cause was to be determined according to the local laws of the place where the bill was negotiated, and the plaintiff's acceptance of the bill having been vacated and declared void by a competent jurisdiction, he thought the sentence was conclusive and bound the Court of Chancery here, and the injunction was granted. *Burrows v. Jemino*, 2 *Str.* 733. See also *Ballantine v. Golding*, *Co. B. L.* 347. 1*st Ed.* *Potter v. Brown*, 5 *East*, 124. But it is otherwise where by the foreign law the *remedy* only is barred. *Willams v. Jones*, 13 *East*, 439. And a foreign bankruptcy and certificate is no bar to a debt contracted in England. *Smith v. Buchanan*, 1 *East*, 6. Therefore a bill of exchange drawn in Ireland and accepted and paid by the plaintiffs in England, for the accommodation of the drawer, is a debt contracted in the latter country, and is not discharged by the bankruptcy and certificate of the drawer in Ireland. *Lewis v. Owen*, 4 *B. & A.* 654. *and see* *Quin v. Keefe*, 2 *H. Bl.* 553.

Liability of the drawee or other person, in consequence of a promise to pay.] Where the drawee of a bill does not accept it, but promises to pay the amount to the holder on receiving certain funds, he may in some cases be sued by the holder, not upon the bill, but in an action for money had and received. Thus where a bill was drawn payable out of a particular fund, which prevented the plaintiff from recovering upon it as a bill of exchange, but it appeared that the drawee had said, on the bill being presented, that he had then no money of the drawer in his hands, but that he would pay it out of the drawer's money when he received it, Lord Ellenborough held that the drawee having received money of the drawer more than sufficient to pay the bill, was liable to the holder in an action for money had and received. *Stevens v. Hill*, 5 *Esp.* 247, *and see* *Clarke v. Adair*, *cited* 4 *T. R.* 343. But even if money were remitted to the drawee for the express purpose of supplying him with funds to accept the bill, yet an action for money had and received will not lie against him by the holder, without some assent express or implied, on the part of the drawee or other person receiving the money, to that appropriation of the money. *Williams v. Everitt*, 14 *East*, 582. *Grant v. Austin*, 3 *Price*, 58. Thus where a bill of exchange payable at the house of A. had been there presented for payment and dis-

honoured, and the acceptor subsequently remitted to A. a bill which was afterwards paid, for the purpose of enabling him to pay the dishonoured bill, and also another of less value, and A. in his answer addressed to the acceptor, stated the fact of the bill being dishonoured, but added that the money received should be carried to the acceptor's credit, and afterwards paid the smaller bill, it was held that the holder of the other bill could not maintain an action against A. *Per Abbott, C. J.* "Where a party to whom a bill is remitted, repudiates the trust with which the bill is clothed, that may give to the person remitting the bill a right to bring trover for it, but it does not give any right of action to the person to whose account the bill is directed to be applied." *Yates v. Bell*, 3 *B. & A.* 644. However if the party receiving the money can be considered to be, at the time of the receipt, the agent of the holder for the purpose of getting the bill paid, the action may be maintained without proving any such assent. Thus where De Bernales, the holder of a bill payable at Fullers', remitted it to Newnhams to get paid, and by exchange of bills between Newnhams and Fullers, the bill was lodged with Fullers to whom the acceptor paid the amount of the bill, which Fullers refused to pay over to De Bernales, it was held that they were liable to De Bernales in an action for money had and received, for having taken the bill for the very purpose of receiving payment, Fullers could not renounce that purpose, but were bound to apply the money paid to them specifically for the discharge of that bill to that purpose and no other. *De Bernales v. Fuller*, 14 *East*, 598. 5 *B. & A.* 820. The principle of this case was confirmed in the following. The plaintiff paid into his own banker's a check for 250*l.* drawn upon them by a third person, which they received without any objection, and in the course of the same day the drawer of the check paid in a sum of money, part of which he specifically appropriated, leaving a balance unappropriated of 237*l.* The bankers, who were then creditors of the drawer's to a large amount, wrote the next morning to the plaintiff, stating that the check was not paid, but they would keep it in the hope of there being money to pay it, and on that day a further unappropriated balance was paid in, making altogether a sum exceeding the plaintiff's check; under these circumstances it was held that the plaintiff might maintain an action for money had and received against the bankers, and that the latter, being his agents for the receipt of the money, could not appropriate the balance to the payment, either of their own general account against the drawer, or of two checks presented on the same day, but subsequently to that of the plaintiff, and paid by them. *Kilsby v. Williams*, 5 *B. & A.* 815.

Where money is remitted for the purpose of taking up a bill of exchange, and the parties remitting it countermand such

application before payment of it to the holder, or appropriation of it to his credit, the holder cannot recover against the person receiving the money in an action for money had received. The defendants, two days after a bill became due, received from the acceptors money to take up the bill. The defendants accordingly applied to the plaintiffs, the holders, to take the bill up; but they had sent it back to the acceptor. The acceptor then countermanded the application of the money. The plaintiffs in the mean time having received back the bill, requested payment from the defendants, and sued them for money had and received; but the court of C. P. held that the latter were not liable. *Stewart v. Fry*, 7 *Taunt.* 339. 1 *B. Moore*, 74. *S. C.* The plaintiff and Mintern and Co. both kept accounts with the defendants, bankers. The plaintiff gave Mintern and Co. the following order on the defendants: "I request you to hold over 400*l.* from my private account to the disposal of Mintern and Co." Upon this order being delivered one of the defendants wrote on the debit side of the plaintiff's account, "By Mr. G.'s letter 400*l.* is to be held at the disposal of Mintern and Co." Afterwards the defendants sent in their account to the plaintiff, acknowledging the receipt of the order for 400*l.*, but not debiting his account with that sum. The plaintiff then countermanded this order, but after the countermand the defendants transferred the 400*l.* to the account of Mintern and Co. In an action by the plaintiffs, for money had and received, Lord Gifford left it to the jury to say, whether it was the intention of the parties that the order should be absolute or conditional. If it was an absolute order and accepted as such by the defendants, the plaintiff had no right to revoke it. If on the other hand it was executory, and they thought it had not been acted on, the plaintiff had a right to revoke it, and his countermand came in time. The jury having found for the plaintiff, the court of C. P. refused to disturb the verdict. *Gibson v. Minet*, 2 *Bingh.* 7. *R. & M. N. P. C.* 68. *S. C.*

In order to enable the holder of the bill to recover against the drawee or other person, in an action for money had and received, on his promise to pay the amount, it must appear not only that the party making such promise, was indebted to the party on the bill, on whose behalf he makes the promise, for money had and received, but also that by the arrangement amongst the parties the debt due from the person making the promise, to the drawer or other person liable on the bill, is extinguished. *See Cuxon v. Chadley*, 3 *B. & C.* 591. *Wharton v. Walker*, 4 *B. & C.* 163.

Liability of the indorser.] An indorsement implies that the indorser is debtor *pro tanto* to the indorsee, and the indorsement is a contract by the indorser, that that debt shall be duly

paid. *Per Bayley J. Priddy v. Henbrey*, 1 *B. & C.* 681. An indorsement operates like the drawing of a new bill, the indorsee standing in the situation of drawer, and the indorsee in that of payee. *Smallwood v. Vernon*, 1 *Str.* 479. *Hodges v. Stewart*, 1 *Salk.* 125. *Gibson v. Minet*, 1 *H. Bl.* 587. *Ballingalls v. Gloster*, 3 *East*, 482; *ante*, *p.* 2. Upon this ground it is held that immediately upon the refusal of the drawee to accept, the indorser is liable to be sued. *Ballingalls v. Gloster*, 3 *East*, 481. *Heylin v. Adamson*, 2 *Burr.* 674. Where the bill does not contain any words making it negotiable, an indorser will only be liable to the party to whom he immediately indorsed, in the same manner as the drawer of such a bill would be liable to the payee. *Hill v. Lewis*, 1 *Salk.* 132. *Hodges v. Stewart*, 1 *Salk.* 125. And in general the indorsee may come against the indorser, though the bill is a mere nullity in other respects. *Ex parte Clarke*, 3 *Bro. C. C.* 238. The liability of the indorser is discharged by want of notice, as in the case of the drawer. *See post.*

It has been already stated, *ante*, *p.* 42, that no person can be sued upon a bill or note (unless in case of a parol acceptance, *vide post*), whose name does not appear on the face of the instrument, though he may in certain cases be sued upon the original consideration for which the bill or note was given.

The liability of a party transferring a bill by delivery only, without indorsement.] In general, where a bill or note is transferred by delivery, without indorsement, for a valuable consideration, as for goods sold to the party transferring it, the obligation upon him is the same, though the remedy is different, as when the bill or note is transferred by indorsement, and in case of its dishonour, he who took the bill or note may sue him from whom it was taken, upon the original consideration. A distinction was formerly recognized between the case of a delivery of a bill for a precedent debt, and the case where the delivery and the debt arose out of the same transaction; thus it was said by Holt, C. J., that if a man contracts for goods, and after his carrying them away gives the seller a goldsmith's note for the money, it does not amount to a payment; but if it were given at the very time of the contract, it would be *primâ facie* evidence that it was taken in payment. *Anon.* 12 *Mod.* 408. But this distinction is not supported by the later cases. Where the seller of goods agrees to take notes as payment, and to run the risk of their being paid, that is to be considered as payment, whether the notes are afterwards paid or not, but without such agreement the giving of such notes is no payment. *Per Lord Kenyon, Owenson v. Morse*, 7 *T. R.* 66. *Tempest v. Ord*, 1 *Madd.* 89. Thus where the defendant being indebted to the plaintiffs for goods sold, and C. being indebted to the defendant, the plaintiffs with the consent of the defendants drew a bill on C. payable at two months, which C. ac-

cepted, but afterwards dishonored, it was held that the bill was not to be considered as accepted in satisfaction of the debt, and that not being paid, the debt remained; it was also held that as the defendant was not a party to the bill he was not entitled to notice of dishonor. *Swinyard v. Bowes*, 5 *M. & S.* 62. Nor is it material that by the contract the goods, &c. are to be paid for by a bill, for still, unless that bill proves available, it will not be accounted payment. Thus where Dickson sold a quantity of sugar to Parker, for which the latter was "to pay him in one month, in good bills at two months;" and bills were accordingly given upon parties who became bankrupt, and Parker also became bankrupt, the Lord Chancellor ordered Dickson to prove not only under the commissions against the parties to the bills, but also under Parker's commission. *Ex parte Dickson, cited* 6 *T. R.* 142. But where, on the sale of goods, the purchaser gave an order upon C. and Co. to give to the vendor "good bills on London at seventy days," and the vendor took bills which were dishonored; Lord Kenyon is reported to have said that under the order to C. and Co., it was incumbent on the vendor to take care that he got good bills, that he therefore took them at his peril, and their having turned out bad did not give him a right to waive all the intermediate transaction, and have recourse to the demand for goods sold. *Bolton v. Reichard*, 1 *Esp.* 10. 6 *T. R.* 139. *semb. S. C. and see* 1 *M. & M.* 30; *and post.* Where A. having been arrested at the suit of B. gave him a draft for part of the demand, and agreed to settle the remainder in a few days, and the draft was dishonored, on which B. arrested him again on the same affidavit, it was held to be regular; and Lord Kenyon said, that in cases of this kind, if the bill which is given in payment do not turn out to be productive, it is not that which it purports to be, and which the party receiving it expects it to be, and therefore he may consider it as a nullity, and act as if no such bill had been given at all. *Puckford v Maxwell*, 6 *T. R.* 52.

Where a bill or note has been indorsed to a person in payment for goods, &c. though not as absolute payment, yet until that bill or note is due or dishonored, no action can be maintained by the vendor against the vendee; *Kearslake v. Morgan*, 5 *T. R.* 513; and payment of such bill or note will be presumed after it is due, unless the contrary be shewn. *Hebden v. Hartsink*, 4 *Esp.* 46. *Stedman v. Gooch*, 1 *Esp.* 3, 4.

Although in general where a bill or note is transferred by delivery, without indorsement, for a valuable consideration, as for goods sold to the party transferring it, the obligation upon him is the same, though the remedy is different, as when the bill or note is transferred by indorsement, *ante*, p. 95; yet when it appears that by the contract the bill is to be taken *as cash* or as complete payment, then, in case of its dishonor, the person who took it has no remedy except against the parties

to the bill. Thus, in an early case, it was held that a goldsmith's note is no payment, being only paper and received conditionally, if paid, and not otherwise, without an express agreement, to be taken as cash. *Ward v. Evans*, 2 *Salk.* 442. So it was said by Lord Kenyon, in *Owenson v. Morse*, 7 *T. R.* 66, that if the defendant had agreed to take the notes as payment and to run the risk of their being paid, that would have been considered as payment, whether the notes had or had not been afterwards paid.

There is also another exception to the general rule, that a bill or note delivered in payment, is not to be considered as actual payment, unless duly honored; and that exception is, where the person indebted to the party taking the bill, gives him an order upon third persons entitling him to receive cash, instead of which the creditor elects to take a bill; in which case though the bill is dishonoured, the debtor is discharged. The plaintiff, who had sold goods to the defendant, took a note from the defendant upon his banker, who asked the plaintiff if he would have money or notes. He said he must pay it away, and therefore, took two notes payable to his creditors, and received of the banker 7*s.* overplus, and within three hours afterwards the banker broke. It was ruled by Pemberton, C. J., that the defendant was not liable, and it was agreed, that if the banker had refused to pay the plaintiff, the defendant would have been chargeable still. But here the plaintiff had accepted the banker for his debtor, by receiving part of the money, and by taking notes in his creditor's name. *Vernon v. Boverie*, 2 *Show.* 296. So where the vendor of goods received an order upon the banker of the purchaser "Please to pay the Gomersal Mill Company 193*l.* equal to six months," and on presenting it, the agent of the vendor was told he might have the whole in cash allowing discount, but received a bill at three months for 100*l.*, and the rest in banker's notes, which bill was afterwards dishonored; it was held that as the plaintiff had thought fit to waive his right to immediate payment, and to take the bill, he must bear the loss which had happened through his own default. *Smith v. Ferrand*, 7 *B. & C.* 19. But it seems that in such cases, the taking a check upon a banker, from the agent of the debtor, will not, if the check is dishonored, discharge the purchaser. The plaintiff employed the defendant, as a salesman in Smithfield, to sell cattle. On the 15th June, the plaintiff's son went to receive the money. The defendant carried the young man with him to Mingay & Co. who acted as book-keepers and sub-agents for him, and desired them to make out the plaintiff's account. Mingay & Co. offered to pay the plaintiff's son in bank of England notes, but he said a check would suit him better, and received Mingay & Co.'s check, which was dishonored. *Per Lord Ellenborough*, "In the ordinary case, if a creditor prefers a bill of exchange

accepted by a stranger to ready money from his debtor, he must abide the hazard of the security he takes. But Mingay & Co. are not to be considered in the light of third persons, but as the defendant's servants. When they offered to pay by notes or their check, it was tantamount to an offer to pay by notes or *his* check. The check must be looked upon as his, and there is no pretence for saying that a debtor is discharged by giving a check which produces nothing, although payment in cash may have been previously tendered." *Everett v. Collins*, 2 *Campb.* 515. 7 *B. & C.* 24, 25. Where there was a charterparty covenanting for payment of freight upon a right and true delivery of the goods at a foreign port, and the master took from the freighter's agent, who was furnished with funds to pay him the freight, a bill of exchange upon a third person, which was dishonored, it was held by Gibbs, C. J. that the freighter was not thereby discharged. *Marsh v. Pedder*, 4 *Campb.* 257. So where the plaintiff engaged by charterparty to carry goods to Ancona for the defendant, and accordingly delivered them to the agent of the defendant, and received from him a bill on the defendant for the freight, which was dishonored, it was held that the defendant was not discharged by the plaintiff's taking the bill. "If the fact had been," said Lord Kenyon, "as supposed in argument by the defendant's counsel, that the consignee had been ready to pay in money, and that the plaintiff had taken this bill for his own accommodation, there would have been some weight in the argument, but the fact was otherwise." *Tapley v. Martins*, 8 *T. R.* 451. The point adverted to by Lord Kenyon, arose in the following case. The master and part-owner of a vessel carried a cargo from St. John's Newfoundland to Bilboa, and delivered it there to the consignees (he having signed bills of lading, making the cargo deliverable to the consignors or their assigns, he or they paying freight for the same) taking a bill for the freight, which was afterwards dishonored; in an action commenced against the consignors for the freight, it was held that the jury were properly directed to find for the defendants if they thought that the master took the bills voluntarily, and for his own convenience, and that the defendants were not bound to prove that an offer was made to pay in cash. And *per Bayley, J.* "I think that the evidence in this case took it out of the general rule laid down in *Marsh v. Pedder*. If the master of a vessel is to get payment in the best mode he can, and has no power to get any thing but a bill, he must take that; but if he can get paid in any better mode he should do so, otherwise he will be bound by taking a bill. The means of proving that he could not obtain payment by any other mode lay on the plaintiffs." *Strong v. Hart*, 6 *B. & C.* 161. The plaintiff by charterparty engaged to bring a cargo of cotton from Alexandria to Liverpool, "the freight to be paid on unloading and right delivery of the cargo, one third in cash, and the remainder

by an approved bill at three months' date." The ship was consigned to Garnett at Liverpool, who had authority from the defendants to settle the freight. The plaintiff, without apprising the defendants, received from Garnett his acceptance for 1000*l.* which was dishonored. *Per Abbott, C. J.*, "I have no doubt about the point. The bill, even if taken as an approved bill, cannot, if unproductive, be reckoned in discharge of the defendants." *Taylor v. Briggs*, 1 *Moody & Malkin*, 28. Where A. sold goods to B. for which the latter was to pay by a bill at three months, and B. gave A. a check on his bankers (who were also the bankers of A.) requiring them to pay A. on demand in a bill at three months, and A. paid the check into the bankers, taking no bill from them, but the amount was transferred in the banker's books from B.'s account to A.'s with the knowledge of both, and the bankers failed before the check became due, it was held that A. could not recover the value of the goods from B. *Bolton v. Richard*, 6 *T. R.* 139. *See Brown v. Kewley*, 2 *B. & P.* 518.

Liability of party delivering over bill by way of discount.] Where a bill or note is delivered over by way of discount, and the party delivering it does not indorse it, and the bill or note is dishonored, there is no remedy against the party delivering it. "It has been held," says the Lord Chancellor, in *Ex parte Blackburne*, 10 *Ves.* 206. "that if there is no antecedent debt, and A. carries a bill to B. to be discounted, and B. does not take A.'s name upon the bill, if it is dishonored, there is no demand, for there was no relation between the parties excep that transaction, and the circumstance of not taking the name upon the bill is evidence of a purchase of the bill." *And see Fenn v. Harrison*, 3 *T. R.* 759. *ante, p.* 43. So where A. gave B. cash for a bill, but refused to let B. indorse it, and B. afterwards became bankrupt, and A. proved the amount of the bill under his commission; the Chancellor held this to be a sale of the bill, and ordered the proof to be expunged. *Ex parte Shuttleworth*, 3 *Ves.* 386. *ante, p.* 42. *And see Ex parte Roberts*, 2 *Cox*, 171. So it was said by Holt, C. J., that if a man has a bill payable to him or bearer, and he delivers it over for money received, without indorsement of it, this is a plain sale of the bill, and he who sells it does not become a new security; but if he had indorsed, he had become a new security, and then he had been liable upon the indorsement. *Bank of England v. Newman*, 1 *Ld. Raym.* 442. *Com.* 57. *S. C.* So in the case of an exchange of bills without indorsement, the party giving the bills without indorsement, will not be liable in case of their dishonor. *Fydell v. Clark*, 1 *Esp.* 447. *And see Ex parte Hustler*, 1 *Glyn & Jam.* 9. *post Chapter* XIV.

A transfer by delivery where a bill or note is sold, may imply that it is a genuine bill. *Bayley*, 129. And should it appear to

be a forgery, the party who has received money upon it will be answerable to that extent. A. having a navy bill purporting to be for 1800*l.* paid it to B. for that sum; B. passed it to C. who presented it at the Navy Office, for payment, when it appearing that it was originally drawn for 800*l.* only, and that the sum had been fraudulently altered to 1800*l.*; the Navy Office detained the bill and issued a fresh one for 800*l.*; C. demanded and received from B. the remaining 1000*l.*, and it was held that B. was entitled to recover that sum from A., though all the parties were equally ignorant of the fraud. *Jones v. Ryde*, 1 *Marsh.* 157. 5 *Taunt.* 488. *S. C. Bruce v. Bruce*, 1 *Marsh.* 165. "I believe it is not disputed," said Lord Chief Justice Gibbs, in the above case, "that if a man take a forged note, he is entitled to recover the amount of it from the person of whom he received it; and I cannot distinguish this from the case of a promissory note; for though one should not be answerable on the note as party to it, one should be liable for the money which had been paid on the supposition of its being worth so much." (*Note* 17.) So where the plaintiffs, bankers, discounted for the defendants, bill-brokers, a bill of exchange which the latter did not indorse, and it appeared that the signatures of the drawer and acceptor (the latter of whom kept an account with the plantiffs) were forged; Abbott, C. J. ruled that the defendants were liable to refund the money, and that the fact of their having paid over the money to the indorsee, for whom they were brokers, would not relieve them from their liability. "If you take a bill without an indorsement," said his Lordship, "you cannot sue the person from whom you received it; but here, in fact, the instrument, on the faith of which the money was advanced, turns out not to be a bill of exchange as it was represented, being altogether a forgery, and that I conceive to be the distinction." *Fuller v. Smith, Ry. & Moo.* 49. *See further, as to payments on forged bills, post, Chapter* X.

Liability of party delivering over bill—how discharged.] Though bills or notes given in payment, will not operate as such unless actually paid, yet they will operate as a discharge, unless the party who holds the instruments does all that the law requires to be done in order to obtain payment of them. *See stat.* 3 & 4 *Ann, c.* 9. *s.* 7. In an action for the price of goods, it appeared that the same were sold at York, on Saturday the 10th December; and on the same day at three o'clock in the afternoon, the vendee delivered to the vendor, as and for a payment of the price, certain promissory notes of the bank of D. & Co. at Huddersfield, payable to bearer on demand. D. & Co. stopped on the same day at eleven o'clock in the morning, and never afterwards resumed their payments; but neither of the parties knew of the stoppage or insolvency of D. & Co. The vendor never circulated the notes or presented

them to the bankers for payment, but on Saturday the 17th he required the vendee to take back the notes, and to pay him the amount, which the latter refused. It was held that the vendor of the goods was guilty of laches, and had thereby made the notes his own, and that consequently, they operated in satisfaction of the debt. *Per Holroyd J.* "I think that under the circumstances of this case the plaintiff is not entitled to recover. The notes were paid by the plaintiff and received by the defendant as money, and having been paid and received as money, and both parties being innocent, and the notes being what they imported to be, it seems to me that they must, according to the case of *Miller v. Race*, (1 *Burr.* 452, *post.*) operate as payment. But without deciding that the plaintiff was debarred in the first instance, from electing to consider them either as negotiable instruments or as money, I think they operated as payment, and that the plaintiff, by not taking due steps to obtain payment, lost his right to return them to the party from whom he received them; for although bills and notes delivered as a satisfaction for a debt, do not in general operate as a satisfaction, unless they turn out to be valuable; yet the case is otherwise if due steps are not taken to obtain payment from the party who is in the first instance bound to pay them. The instruments in question are, in point of law, promissory notes, and therefore due diligence ought to have been used to obtain payment, and if payment had been refused, notice ought to have been given of that refusal. Now here the notes were not presented for payment. It is true that at the time that the plaintiff ought to have presented them for payment, the bankers had become insolvent, but that being so, the plaintiff ought then at all events to have given notice to the defendant that the bankers had become insolvent, and that he, the plaintiff, required him, the defendant, to pay them. Not having done so, I think the plaintiff is not entitled to recover." *Camidge v. Allenby*, 6 *B. & C.* 373.

In the foregoing case, the defendant was a party to the notes, for they were payable to the bearer on demand, and he was the holder of them, and when such notes are passed from hand to hand, the person taking them must trace his right through the former holder. *Per Bayley, J. Id.* 381. But, where the vendee is not a party to the bill, or where the action is brought against a person who has guaranteed the price of the goods, without becoming a party to the bill, such vendee or guarantee cannot, in general, insist upon want of notice, as a defence to an action brought for the value of the goods sold, or upon the guarantee. *See post, Chapter* IX.

Where a bill was delivered, in lieu of a note for a larger amount, on condition that the note should revive, in case the bill was not duly honored, and the party taking the bill neglected to present it on the day it became due, and the amount was tendered by the acceptor of that bill on the following day,

but refused; it was held, that the liability on the note was not revived, and that no action would lie upon it. *Soward v. Palmer*, 8 *Taunt.* 277.

Where a bill, given in payment for goods sold, and indorsed generally by the purchaser, has been lost before payment, the seller of the goods cannot recover against the purchaser, either upon the bill, or for the goods. *Champion v. Terry*, 3 *B. & B.* 295. But, where the seller drew a bill upon the purchaser, for the amount of the goods, and the purchaser accepted it, but it was lost before it was indorsed by the seller, who sued the purchaser for goods sold and delivered, it was held, that the former was entitled to recover, for the bill, not having been indorsed, could not affect the defendant, who was, therefore, liable in respect of the original demand. *Rolt v. Watson*, 4 *Bingh.* 273. *and, see post, Chap.* XV.

Of indorser—how discharged—by indulgence.] The indorser of a bill may be discharged, by the holder giving time to the acceptor. *Anderson v. George*, 1 *Selw. N. P.* 372. *4th edit. and see the cases, ante.* So, where the holder discharges a prior indorser, it is a discharge of all the subsequent indorsers. "It is true," says Lord Eldon, C. J. "the holder of a bill of exchange has his remedy against all the parties on a bill; but the holder has it not in his power to give time to a party on a bill, first liable, and afterwards to proceed against another; the holder may give time to his immediate indorsee; he may discharge him out of custody, at the same time that he is proceeding to execution against a prior indorser to him, or against the drawer or acceptor; but he cannot give time to, or discharge, the drawer or acceptor, and afterwards proceed against that indorser. Suppose the holder, a second indorsee, should give time to the payee, the first indorser, and take his warrant of attorney, payable at a future time, could he proceed, and take out immediate execution against his immediate indorser? I think not: for if *that* indorser paid the money, he would have a right to resort immediately to his indorser, that is, to the payee, who had before had time from the holder. This is inconsistent." *English v. Darley*, 3 *Esp.* 50. 2 *B. & P.* 62. *S. C.* But where the holder of a bill sued an indorser, took him in execution, and discharged him on a letter of licence, it was held that he did not discharge a *prior* indorser. *Hayling v. Mulhall*, 2 *W. Bl.* 1235. 2 *B. & P.* 62. So, it is said by Mr. Justice Bayley, that the rule as to the discharge of a party by giving time, does not apply to a party lower down the bill. *Claridge v. Dalton*, 4 *M. & S.* 232. The several parties on a bill are chargeable in different order. The acceptor is first liable, and the indorsers in the order in which they stand on the bill; but the suing, or taking a security from one of the parties liable shall not discharge another who is liable prior to him in point of order. *Per Lord Eldon, C. J. Smith v. Knox*, 3 *Esp.* 47.

CHAPTER V.

OF THE CONSIDERATION OF BILLS AND NOTES.

In bills and notes a consideration is presumed.
Want of consideration.
In whole, or in part.
In cases of fraud.
What amounts to.
Between what parties a defence.
Illegality of consideration.
At common law.
By statute.
Whether it vitiates the bill, in part, or in toto.
Between what parties a defence.
Usury.
To make consideration usurious, there must be a loan.
What will amount to usury in discounting a bill.
Receipt of commission for trouble not usurious.
Renewed bills, when usurious.
Between what parties usury will avoid a bill.
Gaming.
Notice to prove consideration.

In bills and notes, a consideration is presumed.] In other simple contracts, it is necessary for the party who attempts to enforce them, to state and prove the consideration upon which they are founded; but in bills of exchange and promissory notes no consideration need be stated, nor, in general, proved; for they, *primâ facie*, import a consideration. *See Philliskirk v. Pluckwell*, 2 *M. & S.* 395. *Guichard v. Roberts*, 1 *W. Bl.* 445. Though the defendant may, in some cases, compel the plaintiff to prove the consideration which he gave for the bill or note; *vide post*; and may himself shew that the consideration was a bad one. *Vide post, and see Guichard v. Roberts*, 1 *W. Bl.* 445.

So also, the indorsement of a bill or note, is, in itself, *primâ facie* evidence of a good consideration between the indorser and indorsee. *Wyatt v. Bulmer*, 2 *Esp.* 538. *Priddy v. Henbrey*, 1 *B. & C.* 681. And, an acceptance is *primâ facie* evidence, that the acceptor has assets in his hands. *Anderson v. Cleveland*, 13 *East*, 430, (*n*). *Ex parte Heath*, 2 *Ves. & B.* 241. *Bickerdike v. Bollman*, 1 *T. R.* 409. *Gibson v. Minet*, 1 *H. Bl.* 602.

Want of consideration—in whole or in part.] It has been already stated, that a bill or note imports a consideration, and, therefore, it is not necessary for the party who sues upon it, to give any evidence of consideration in the first instance. But, between certain parties, and under certain circumstances, which will be explained hereafter, the want, or illegality, of consideration, forms a defence.

In cases, in which the want of consideration is a good defence, such want of consideration is either total or partial. If total, the plaintiff's action is wholly defeated; if partial, it is only defeated *pro tanto*. In an action by the payee against the acceptor of a bill, it appeared that the defendant had accepted it for the accommodation of the plaintiff, except as to 10*l.* which had been paid into court; and, on this evidence the plaintiff was nonsuited, Lord Ellenborough observing, that, as between these parties, it was an acceptance to the amount of 10*l.* only. *Darnell v. Williams*, 2 *Stark.* 166. So, in an action by the payee against the acceptors of a bill, it appeared that there was no consideration, except as to 5*l.* 9*s.* which had been paid, and the plaintiff was nonsuited. *Barber v. Backhouse, Peake*, 61. Where the defendant accepted a bill, for the accommodation of Phillips & Co. for 415*l.* 17*s.* 6*d.* and P. & Co. indorsed it to the plaintiffs, their bankers, who knew that the bill was an accommodation bill; it was held, that the plaintiffs could only recover on this bill, 265*l.* 17*s.* 8*d.* the amount of the balance due to them from P. & Co. *Jones v. Hibbert*, 2 *Stark.* 304. *See, also, Willis v. Freeman*, 12 *East*, 656. *post, Chap.* VI. So, where the defendant had drawn a bill, for the accommodation of the acceptor, and the defence was, that the indorsee, knowing that circumstance, had not paid the full value for it; Lord Kenyon said, that where a bill of exchange is given for money really due from the drawee to the drawer, or is drawn in the regular course of business, in such case, the indorsee, though he has not given to the indorser the full amount of the bill, may yet recover the whole, and be the holder of the overplus, above the sum he has really paid, to the use of the indorser; but, where the bill is an accommodation one, and that known to the indorsee, and he pays but part of the amount, in such case he can only recover the sum he has actually paid for the bill. The plaintiff was

nonsuited on another ground. *Wiffen v. Roberts*, 1 *Esp.* 261. In an action on a promissory note, given by the defendant, as an apprentice fee with his son, to the plaintiff, it appeared, that, in consequence of no mention being made of the premium in the indentures, they were *void*; to the objection of want of consideration, it was answered, that the master had provided board and lodging for some time for the apprentice, which was, in itself, a sufficient consideration; but it was held that the consideration had wholly failed. *Jackson v. Warwick*, 7 *T. R.* 121. But where the indentures were *voidable* only, it was held, that there was a sufficient foundation to support the note, (the fee having been payable in cash, but the note having been taken as an indulgence) though the apprentice had been discharged by a magistrate, on proof that the master had enticed him to commit felony. *Grant v. Welshman*, 16 *East*, 207; *and see Cuff v. Brown*, 5 *Price*, 297.

Where a bill is given, for the price of goods sold under a fraud, there is no consideration, and the party taking the bill cannot recover on it. Thus, where the plaintiff, knowing of the unsoundness of a horse, sold it to the defendant with a warranty, who gave the plaintiff a banker's check for the price, though the plaintiff had refused to receive the horse back, and, therefore, as it was contended, the contract was not rescinded, yet it was held, that, as the transaction was a fraud, the plaintiff could not recover on the check. *Lewis v. Cosgrave*, 2 *Taunt.* 2. So, where in an action by the payee of a promissory note, against the maker, given for the price of certain pictures, it was alledged for the defendant, that the amount of the note greatly exceeded the value of the picture, Lord Ellenborough refused to admit evidence for the purpose of reducing the damages, by shewing that the picture was of an inferior value; but said, that if the defendant could, by the inadequacy of the value, and other circumstances, prove fraud on the part of the plaintiff, so as to shew that there was no contract at all, the evidence would be admissible. *Solomon v. Turner*, 1 *Stark.* 51; *and see Ledger v. Ewer*, *Peake*, 216, *post.*

Although a partial failure of consideration (where such is admissible) is an answer to the plaintiff's demand, *pro tanto*, yet it is only where the sum to be deducted is matter of definite computation, and not of unliquidated damages, that the defendant can avail himself of this defence. Thus, in an action by the drawer against the acceptor of a bill, the defence was, that the bill had been accepted for the price of some hams, bought by the defendant from the plaintiff, and that they were almost unmarketable. The sum for which they had been sold by the defendant was paid into court. Lord Ellenborough held, that, though where the consideration of a bill fails entirely, it will be a sufficient defence to an action on it by the original party, yet it is no defence where the consideration fails partially,

but, that under such circumstances, the giver of the bill must take his remedy by an action against the person to whom it was given. *Morgan v. Richardson*, 1 *Campb.* 40. (*n*). From other reports of this case, 3 *Smith*, 487, (*n*), 7 *East*, 482, (*n*), it seems to have been held, that the defendant could not avail himself of this defence, after the payment of money into court. But, as to this point, see *Barber v. Backhouse*, *Peake*, 61. *ante*, *p.* 104. And, in *Tye v. Gwynne*, 2 *Campb.* 346, Lord Ellenborough said, that, although money was paid into court in *Morgan v. Richardson*, that circumstance formed no ingredient in the opinion he then expressed. So, where in an action by the drawer and payee of a bill, against the acceptor, the latter proposed to shew, that the bill had been accepted for the price of a quantity of cheese, sold by the plaintiff to the defendant, which was of a bad quality, and that, therefore, the consideration had in a great measure failed, Lord Ellenborough said, that he should adhere to his opinion in *Morgan v. Richardson*. *Tye v. Gwynne*, 2 *Campb.* 346. *S. P. Fleming v. Simpson*, 1 *Campb.* 40. (*n*). And, where the defence was, that a note had been given to the plaintiff, for disclosing an improvement in machinery, which appeared to be of less value than was anticipated, it was held, that the plaintiff might recover the whole sum on the note. *Day v. Nix*, 9 *B. Moore*, 159. So, where the defendant had contracted with the plaintiff for a lease, and was let into possession, and accepted a bill, drawn by the plaintiff, for the consideration money, it was held, that the defendant was liable upon the bill, and must take his remedy on the agreement for the non-execution of the lease. *Moggridge v. Jones*, 14 *East*, 486. 3 *Campb.* 38. *S. C. Archer v. Bamford*, 3 *Stark.* 175, *post*.

So where a promissory note, payable on demand with interest till paid, was given in part consideration for the share of a ship purchased by the maker from the payee, without the observance of the provisions of the ship registry acts, and was indorsed by the payee, first to J. L. who on presentment and refusal of payment obliterated his name and returned it, and afterwards to J. G. P. who indorsed it upwards of two years and a half after its date, with J. L.'s name obliterated, to the plaintiff, for a full and valuable consideration without notice; it was held, that though the contract of sale was void, yet as the maker had recognized it by paying one year's interest on the note, and as there was a presumption, that he had received the subsequent earnings to the amount of his share, of the ship in question, and therefore there was a consideration *pro tanto*, the plaintiff, notwithstanding he had taken the note without enquiry, was entitled to recover the whole amount in an action against the maker. *Gascoyne v. Smith*, *M'Clel. & Young*, 338. *See Carmalt v. Haggarty*, (*Scotch*), 2 *Shaw*, 199. *Thomson on Bills*, 148.

The only case in opposition to the doctrine that the plaintiff shall recover the whole amount of the bill, where the partial failure of consideration is in respect of unliquidated damages, appears to be that of *Ledger v. Ewer, Peake*, 216. The defendant in that case, in consideration of being admitted into partnership with the plaintiff, had accepted a bill for 100*l.*, drawn upon him by the plaintiff. It appeared that the plaintiff having got possession of a shop, but having no business and little money, had prevailed on the defendant to enter into this engagement, which the defendant's friends disapproving of, was broken off. Lord Kenyon left it to the Jury to consider whether this was not a gross fraud on the part of the plaintiff; but if they should be of a contrary opinion, and think that the plaintiff was entitled to recover any thing, they would then take into their consideration the damages which he had really sustained by the nonperformance of the contract, and that they were not obliged to give the whole sum, for which the bill was given, in damages.

Want of consideration—in cases of fraud.] If a bill or note is obtained by fraud, the party so taking it cannot recover upon it. Thus where the plaintiff had distrained goods of the defendant on the premises of the plaintiff's tenant, and the defendant, to get rid of the distress, accepted the bill in question, it appearing that there was no rent due at the time of the distress, Best, J. left it to the jury to say whether the plaintiff had not falsely represented to the defendant that the rent was due, in order to induce him to give his acceptance, and that if so, it was fraudulent, and the defendant was entitled to a verdict. *Grew v. Bevan*, 3 *Stark.* 134, *and see Lewis v. Cosgrave*, 2 *Taunt.* 2. *Solomon v. Turner*, 1 *Stark.* 51. *ante, p.* 105. But in order to entitle the defendant to insist upon the fraud, he should repudiate the transaction altogether, for if he takes a partial benefit under it, the consideration fails in part only, and the plaintiff may recover on the bill. *Archer v. Bamford*, 3 *Stark.* 175.

Many cases of want of consideration on the ground of fraud have arisen on compositions with creditors. Thus, where all the creditors of an insolvent consented to accept a composition for their respective demands, on an assignment of his effects by a deed of trust, to which they were all parties, and one of them, *before he executed*, obtained from the insolvent a promissory note for the residue of his demand, by refusing to execute till such note was made; it was held that the note was void, as a fraud on the rest of the creditors, and that a subsequent promise to pay it was a promise without consideration. *Cockshott v. Bennett*, 2 *T. R.* 763. *Jackson v. Lomas*, 4 *T. R.* 166. *See also Feise v. Randall*, 6 *T. R.* 146. *Rose v. Leicester*, 4 *East*, 372. *Lewis v. Jones*, 4 *B. & C.* 506. *Ex*

parte Sadler, 15 *Ves.* 55. The plaintiff, having guaranteed the responsibility of the defendant to A., on the refusal of A. to join in a deed of composition, releasing the defendant, till the plaintiff had paid A the remainder of the defendant's debt, paid such amount to A., and drew a bill upon the defendant for the money so paid, which the defendant accepted. It was ruled that the plaintiff could not recover on this bill, it being nothing more than a circuitous mode of securing to A. the full amount of his debt. *Bryant v. Christie*, 1 *Stark.* 329.

Want of consideration—what amounts to.] The debt of a third person is a sufficient consideration to support an action on a bill or note. Thus where a promissory note was entered into by A. to pay so much to B. for a debt due from C. to B., and it was objected that this not being for value received, was not within the statute, and that *primâ facie* the debt of another is no consideration to raise a promise, the court of K. B. on error from C. B. held, that the note was within the statute, being an absolute promise, and every way as negotiable as if it had been for value received. *Poplewell v. Wilson*, 1 *Str.* 264, *and see Coombs v. Ingram*, 4 *D. & R.* 211. (*See Note* 18.) So a moral obligation is a sufficient consideration. Where a man is under a moral obligation, which no court of law or equity can enforce, and *promises*, the honesty and rectitude of the thing is a consideration; as if a man promises to pay a just debt, the recovery of which is barred by the statute of limitations; or if a man, after he comes of age, promises to pay a meritorious debt contracted during his minority, but not for necessaries; or if a bankrupt, in affluent circumstances after his certificate, promises to pay the whole of his debts; or if a man promises to perform a secret trust, or a trust void for want of writing by the statute of frauds. *Per Ld. Mansfield, Hawkes v. Saunders, Cowper*, 290.

Thus where a bankrupt after his bankruptcy gave a promissory note to the plaintiff, one of his creditors, for part of his debt, it was held that the latter might recover on such note. *Trueman v. Fenton, Cowp.* 544. So where a bankrupt, having promised before his certificate to pay to the plaintiff a debt due before his bankruptcy, indorsed to him two notes for that purpose, it was held that the debt due before the bankruptcy was a good consideration for the bankrupt's promise; that it was not barred by the certificate; and that it would have been available, even if made after the certificate had been obtained. *Brix v. Braham*, 1 *Bingh.* 281. *See* 6 *G.* 4. *c.* 16. *s.* 131.

Where a banker's acceptances for his customer exceeded the cash balance in his hands, and accommodation acceptances were deposited with the banker by the customer as a collateral security, Lord Ellenborough ruled, that whenever the acceptances exceeded the cash balance, the bankers held the collateral bills

for value. *Bosanquet v. Dudman*, 1 *Stark.* 1, *and see Bolland v. Bygrave*, *Ry. & Moo.* 271. A. & Co. bankers in the country, being pressed by B. & Co. their agents in town, to whom they were indebted, to send up any bills they could procure, transmitted *for account* an accommodation bill accepted by D. When the bill became due, the balance was in favour of B. & Co., but the bill was not withdrawn. Afterwards the balance between the two houses turned in favor of A. & Co., and B. & Co. became bankrupts. Lord Ellenborough held that *on account* meant the floating account, and that though there had been a period when B. & Co.'s lien ceased, and the bill might have been redeemed; yet as it was not reclaimed, but allowed to remain in B. & Co.'s hands, the lien revested when the balance turned in their favor, and they were entitled to sue on this bill. *Atwood v. Crowdle*, 1 *Stark.* 483, *and see Woodroofe v. Hayne*, 1 *C. & P.* 601.

The defendant and Morrall were partners, and gave their promissory note to their bankers for 2000*l.* as a security for advances. The defendant thereupon gave Morrall his note for 1000*l.*, to secure his moiety of the 2000*l.* Morrall indorsed this note to the bankers, who having advanced 1300*l.* sued the defendant on his note, and it was held by the court of Common Pleas that there was a sufficient consideration, and that they were entitled to recover. *Heywood v. Watson*, 4 *Bingh.* 496. But where A. accepted a bill for the accommodation of B., which B. delivered to C. his creditor, to provide for a bill about to become due, and C. before A.'s bill became due returned it to B. as useless; it was ruled by Lord Ellenborough that C. could not, by subsequently obtaining possession of the bill, acquire a right of action against A. for that he had abandoned the bill, which B. held as trustee for A. *Cartwright v. Williams*, 2 *Stark.* 340.

Where a bill or note is delivered to a person for a special purpose, he cannot repudiate that purpose, and sue upon the bill in his own name. Thus where E. C., to prevent the striking a docket against her son, delivered a bill to the plaintiff, in order to get it discounted, and the plaintiff, having already in his possession certain deeds as a security for a debt due from the son, having got the bill into his possession, insisted upon retaining both the bill and deeds as securities, Lord Ellenborough held that it was not competent to the plaintiff, after having received the bill for the special purpose of procuring it to be discounted, to disappropriate it; and the plaintiff was nonsuited. *Delauney v. Mitchell*, 1 *Stark.* 439.

In an action by the payee against the drawer of a bill, it appeared that the plaintiff, having money in the funds, applied to R. & Co. as his agents, to sell it out, and remit it to him in bills on Holland. R. & Co. applied to the defendants, and

on 17th February got from them bills on Holland in favor of the plaintiff. It was proved, for the defendants, to be the custom of London, for persons in the habit of remitting foreign bills, to give the bills, but not to receive the money for them till the next post day. In this case the next post day was the 21st. On the 20th R. & Co. failed, so that the money was never paid to the defendants. Lord Loughborough was of opinion that it was competent for the defendants to go into this evidence as against the payee, he being subject to all the equity the defendants could have had against his agents R. & Co., if the bill had been drawn payable to themselves, who must be supposed to have been acquainted with the usage on bills, though his Lordship said that such evidence would be inadmissible had the action been brought by an indorsee for a valuable consideration. *Puget de Bras v. Forbes*, 1 *Esp.* 117. To an action by the indorsees against the maker of a promissory note, the latter pleaded that he drew the note as a surety only for the payee, and that the plaintiffs had released the payee from all claim in respect of the said note, (not alleging that the plaintiffs had notice of the want of consideration between the defendant, and the payee). It was held that the indorsement being for a valuable consideration, the indorsees had the security of the defendant as maker of the note, for their debt; and though they had released the original payee, that they still retained their remedy against the maker. *Carstairs v. Rolleston*, 1 *Marsh.* 207. 5 *Taunt.* 551. *S. C.*

An exchange of securities, as where the maker of a note receives the acceptance of the payee, is a valuable consideration between the parties. *Kent v. Lowen*, 1 *Campb.* 179. (*n*), *and see Spooner v. Gardiner*, *R. & M.* 84. *Rolfe v. Caslon*, 2 *H. Bl.* 571. *post*, *Chap.* XIV.

It seems that where a promissory note is delivered as *a gift*, the maker may insist on the want of consideration in an action against him by the party to whom he delivered it. Formerly, indeed, it appears to have been held that such an instrument might be enforced on the ground of its being in writing, and that the doctrine of *nudum pactum* therefore did not apply; *Williamson v. Losh*, *M.* 16 *G.* 3. *Chitty*, 93. (*n*). 5*th ed. cited* 7 *T. R.* 351; but the authority of this case, so far as it depends on the doctrine of *nudum pactum*, has been denied. 7 *T. R.* 351. (*n*). And in *Nash v. Brown*, 1817, which was an action on a bill of exchange, accepted by the defendant as a present to the payee, and indorsed by him to the plaintiff for a part of the amount; Lord Ellenborough ruled that the plaintiff was entitled to recover only so much as he had actually advanced on the bill. *Chitty*, 93, (*n*). 5*th ed.*, 72, 7*th ed.* So in action on a promissory note, expressed to be for value received, made in favor of an infant of nine years old, it was held to be a question for the jury whether the note was given

for any legal consideration, and that affection to the payee, or gratitude to his father, would not afford a sufficient consideration; and the court were also inclined to think that an intention to evade the legacy duty would not be a sufficient consideration. *Holliday v. Atkinson*, 5 *B. & C.* 501. 8 *D. & R.* 163. *S. C. See Tate v. Hilbert*, 2 *Ves. J.* 115. *Seton v. Seton*, 2 *Bro. C. C.* 610. *Woodbridge v. Spooner*, 3 *B. & A.* 235. 1 *Chitty*, 661. *S. C.*

Want of consideration—between what parties a defence.] The want of consideration, *in toto* or in part, cannot be insisted on as a defence, if the plaintiff or any intermediate party between him and the defendant, took the bill or note *bonâ fide* and upon a valid consideration. *Bayley*, 397. No evidence of want of consideration was ever admitted in a case between an acceptor or drawer, and a third person holding the bill for value; and the rule is so strict, that it will be presumed that he does hold for value, until the contrary appears. The *onus probandi* lies on the defendant. If it can be proved that the holder gave no value for the bill, then, indeed, he is in privity with the first holder, and will be affected with every thing which would affect the first holder. *Per Eyre, C. J. Collins v. Martin*, 1 *B. & P.* 651. Thus where there is a negotiable note, and it comes into the hands of a third or fourth indorsee, though some of the former indorsees might not pay a valuable consideration; yet if the last indorsee gave money for it, it is a good note as to him, unless there should be some fraud or equity against him appearing in the case. *Haly v. Lane*, 2 *Atk.* 182. In an action by the indorsee against the maker of a note thirteen years old, the defendant obtained a rule *nisi*, to set aside a judgment by default, on an affidavit by a third person, that he believed the defendant was swindled out of the note. An affidavit was made on the other side, that the plaintiff took the note *bonâ fide* and gave a valuable consideration for it; and the court held, that however improperly it might have been obtained, a third person who took it fairly and gave a consideration for it, was entitled to recover, and discharged the rule. *Morris v. Lee*, *B. R. H.* 26 *G.* 3. *Bayley*, 397. So it is no answer to an action against an acceptor, by an indorsee for valuable consideration, and without notice, that the payee, previously to the indorsement, had released the acceptor. *Dod v. Edwards*, 2 *C. & P.* 602. So in an action by indorsee for valuable consideration against acceptor, who had accepted for the accommodation of the drawer, Lord Eldon C. J. ruled, that it was no answer that the defendant had accepted the bill for the accommodation of the drawer, and that that fact was known to the holder; for that the latter, if he gave a *bonâ fide* consideration for it, was entitled to recover the amount, though he had full knowledge of the transaction. *Smith v. Knox*, 3 *Esp.* 46. *Fentum*

v. Pocock, 1 *Marsh.* 16. But whether an indorsee for value taking such a bill *after it is due* from a person who gave no value for it, and could not have sued upon it, can recover against the acceptor, seems not to be decided. In *Tinson v. Francis*, 1 *Campb.* 19, where it appeared that the note was given by the defendant to accommodate the payee, and that it remained in the hands of the latter till after it became due, when it was given to a Mr. S. to be returned to the defendant, but was indorsed by him to the plaintiff for value; Lord Ellenborough said, "after a bill or note is due it comes disgraced to the indorsee, and it is his duty to make inquiries concerning it. If he takes it, though he gives a full consideration for it, he takes it on the credit of the indorser, and subject to all the equities with which it may be incumbered." But in a subsequent case, where to an action by indorsees against acceptor the latter pleaded, that he had accepted the bill for the use and accommodation of A., and without any consideration, and that after the bill became due A. indorsed it to the plaintiffs, they well knowing at the time of the indorsement that it was accepted without consideration; the court held, that as there was no allegation of fraud, or that the plaintiffs did not give a full and valuable consideration, the plea was no answer to the action. *Charles v. Marsden*, 1 *Taunt.* 224. (*See Note* 19.) Although no consideration passes between the payee and the drawer of a bill, yet the former may recover on it against the latter if there was a valuable consideration between himself and the acceptor. *Scott v. Lifford*, 1 *Campb.* 246.

Illegality of consideration.] As the want of consideration sometimes forms a defence, so the illegality of the consideration may be relied upon in certain cases, and between certain parties. The cases relative to usurious considerations being numerous, will be found collected under a separate head in the present chapter.

Illegality of consideration — at common law.] The consideration of a bill or note may be illegal either at common law or by statute. Thus, in an action on a promissory note the defendant may shew that it was obtained on a smuggling consideration. *Guichard v. Roberts*, 1 *W. Bl.* 445. Stifling a criminal prosecution is an illegal consideration. *Johnson v. Ogilby*, 3 *P. Wms.* 279. But where a party who had paid away a forged acceptance to the plaintiff, applied to him for it, and indorsed to him in lieu a bill accepted by the defendant, the plaintiff was allowed to recover, Lord Ellenborough holding that to bar the right of the indorsee it was necessary to show that the bill had been indorsed as a consideration for compounding a prosecution for forgery, to which the indorser was liable. *Wallace v. Hardacre*, 1 *Campb.* 45. So where, in an action

against the maker of a note, it appeared that having been convicted for a misdemeanour in ill treating his parish apprentice, the chairman of the court suggested to him that if he paid 40 guineas towards the expenses of the prosecution, he would be imprisoned six instead of twelve months, upon which the note in question was given to a parish officer, it was held that this note was not given to stifle a prosecution, but was rather to be considered as part of the punishment suffered by the defendant. *Beeley v. Wingfield*, 11 *East*, 46. So where D. being appointed receiver in a suit in chancery, was in custody under a warrant for non-payment of a balance certified against him, and the defendant in order to procure D.'s discharge, joined with him as surety in two promissory notes to the plaintiff, who was a party to the suit in chancery, and his solicitor, who sued out the warrant for the amount of the debt and costs, and D. was thereupon discharged by the direction of the solicitor, it was held that the discharge was a legal consideration for the notes, although there were other parties to the suit in chancery who did not concur in the discharge, and therefore D. remained liable to be taken again, yet that the consideration of the notes had not failed, and that it was no objection to the validity of the notes, that the sum given to cover costs exceeded the costs due, no fraud being intended. *Brett v. Tomlinson*, 16 *East*, 293. In an action by the payees against the acceptor of a bill, it appeared that the drawer being indebted to the plaintiffs had obtained his discharge under the insolvent act, upon which the plaintiffs indicted him for fraudulently obtaining his discharge. The plaintiffs subsequently agreed to take from the drawer a composition of 2*s.* 6*d.* in the pound, and 220*l* for costs, and the present acceptance was accordingly given. There being no evidence to show that the costs of the prosecution were included, and the bill being in fact given before the indictment was quashed, the plaintiffs obtained a verdict; and, *per Lord Ellenborough*, "If the party authorised his agent to compound his civil rights only, and after coming to a settlement the creditors chose to forego the prosecution, the transaction was not illegal." *Harding v. Cooper*, 1 *Stark.* 467. And where a warrant was directed to an officer of excise, by the commissioners, commanding him to apprehend a person convicted in several penalties, and take him to prison and keep him there till the penalties were paid, and the officer having arrested the party, discharged him on a promissory note, for the amount of the penalties, payable at a future day, and the commissioners afterwards approved of his conduct, it was held that the discharge was a good consideration for the note. *Pilkington v. Green*, 2 *B. & P.* 151. So where in a similar case, in order to prevent a levy upon his goods, the defendant gave a note for the amount to the supervisor of excise, whose conduct was subsequently approved of by his superiors; Lord Ellenborough held that the plaintiff

might recover, for though, if there were any reason to think that the law had been abused by the plaintiff, he would not be allowed to enforce payment, yet here he appeared to have acted with good faith, and his lordship did not think the previous consent of the commissioners to the arrangement necessary. *Sugars v. Brinkworth*, 4 *Campb.* 46. A note given by the maker to suspend proceedings against him in an action for seduction, is not, as it seems, on an illegal consideration. On a petition to prove such a note, the maker having become bankrupt, Lord Eldon, C. said, "It was quite competent for the bankrupt to confess judgment, instead of which he has given this note which consequently is proveable; the form of the action is for loss of service, and is distinguishable from the cases respecting *pretium pudoris*." *Ex parte Mumford, Aug.* 18. 1808. 1 *Mont. B. L.* 189, (*n.*) 3*d Ed.* 15 *Ves.* 289. *S. C.* A promissory note given by the father of a bastard child to the parish officers, in consideration of his being released out of custody, cannot be enforced, for it is contrary to public policy. *Cole v. Gower*, 9 *East*, 110.

Illegality of consideration — by statute.] In many cases, besides those of usury and gaming, (the cases with regard to which are collected under separate heads; *see post*) the legislature has declared that bills and notes given for illegal considerations shall be *void*. Thus by statute 45 Geo. 3. c. 72. all bills and notes given for ransom of any ship or goods, are declared to be void. *Webb v. Brook*, 3 *Taunt.* 6. Agreements, promises, or other assurances on the sale of offices are void by 5th and 6th Ed. 6. c. 15. *Harrington v. Du Chatel*, 1 *Bro. C. C.* 124. And where a bill of exchange was given by a cornet to a colonel of a regiment for promotion, and was put in suit and the money levied, a court of equity interfered to relieve the defendant. *Whittingham v. Burgoyne*, 3 *Anstr.* 900.

So by 6 Geo. 4. c. 16. s. 125. any contract or security made or given by any bankrupt, or other person, unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or sign such certificate, shall be void. Where a bankrupt, in the interval between the second and third meetings under his commission, gave a promissory note as a security for a previous debt to a creditor who was acting as one of the commissioners at the time and afterwards signed the bankrupt's certificate, it was held invalid; for if the security had been taken in order to induce the commissioner to sign the certificate, it would clearly have been void, and it is against public policy that any thing leading to that result should be allowed. *Haywood v. Chambers*, 5 *B. & A.* 753. *and see Rogers v. Kingston*, 10 *B. Moore*, 97.

Illegality of consideration — whether it vitiates the bill in part or in toto.] If a bill or note is in part upon a consideration which the law has made illegal, and in part upon a good consideration, it has been held that the illegality will taint the whole bill or note, and that the holder, if barred at all by such illegality, will be barred *in toto*, as to his claim on the bill or note. *Bayley*, 406. Thus where, in an action against the acceptor of a bill, it appeared that the drawer had given it to the keeper of a coffee-house, partly for money lent and partly for spirits sold in small quantities contrary to 24 Geo. 2. c. 40. s. 12. it was held that though the statute did not in terms avoid the security, yet it made the consideration illegal, not merely void; that as the security was entire, it could not be apportioned; and that as it was partly given for an illegal consideration the whole bill was void. *Scott v. Gillmore*, 3 *Taunt.* 226, *and see Spencer v. Smith*, 3 *Campb.* 9. *Burnyeat v. Hutchinson*, 5 *B. & A.* 241. But a different rule seems to prevail in bankruptcy, as to the apportionment. *See ex parte Mather*, 3 *Ves.* 373. *Ex parte Bulmer*, 13 *Ves.* 313. *post*, *Chapter* XIV. In an action on a bill of exchange it appeared that it had been given partly for money lent, and partly for money lost at play, and it was held that as the statute 9 Ann. had made void all securities for money lost at play, the plaintiff could not recover on the bill but that he might maintain his action for money lent. *Robinson v. Bland*, 2 *Burr.* 1077.

Illegality of consideration — defence between what parties.] Where a bill or note is declared to be *void* by statute, it cannot be enforced by any person, if the enforcing it will give effect to the illegal transaction. Thus in the case of usury (before statute 58 Geo. 3. c. 93.) it was held that where a bill was accepted on an usurious contract, a *bonâ fide* indorsee for value and without notice, could not sue the acceptor. *Lowe v. Waller*, *Dougl.* 708, 736. *4th ed.* So in the case of a gaming note. *Bowyer v. Bampton*, 2 *Str.* 1155. But if the enforcing the bill will not give effect to the illegal transaction, it may be put in suit by an indorsee without notice of the illegality, and for a valuable consideration. Thus, such an indorsee may sue the drawer of a bill accepted for a gaming debt due from the acceptor to the drawer. *Edwards v. Dick*, 4 *B. & A.* 212, *see post.* It seems to be now settled, that where a bill has been indorsed for an usurious consideration, a subsequent *bonâ fide* holder, though for value and without notice, cannot sue upon such a bill if he is to make title through the illegal indorsement. *Lowes v. Massaredo*, 1 *Stark.* 385, *post*, *p.* 122.

Where the bill or note is made on an illegal consideration, but is not declared to be void by statute, it may be enforced by an indorsee for value and without notice, even against one of the

parties to the original illegal transaction. "I take it to be clear," says Mr. Justice Holroyd, "that where a statute prohibits a thing to be done and does not expressly avoid the securities which fall within the prohibition, then if the violation of the law does not appear on the face of the instrument, and the party taking it is ignorant that it was made in contravention of the statute, it is an available security in the hands of such person." *Broughton v. Manchester Water Works*, 3 *B. & A.* 10. Thus where a bill was accepted by the defendant on account of losses in the course of illegal insurances in the lottery, Eyre, C. J. held the circumstance of the original transaction being contrary to law, (provided the security was not declared to be void by law), did not, where the action was by a remote indorsee, necessarily call upon him to prove the consideration; the indorsement was of itself *primâ facie* evidence of a good consideration; and if the defendant meant to call upon the holder to prove the consideration, it would be necessary to implicate him some way in the transaction, or to show some degree of privity or knowledge respecting it. *Wyatt v. Bulmer*, 2 *Esp.* 538. It seems, however, that in such case the plaintiff, after evidence given by the defendant of the illegal transaction, would be bound to show that he gave a valuable consideration for the note. *See Duncan v. Scott*, 1 *Campb.* 100. *Thomas v. Newton*, 2 *C. & P.* 606. *post.* So in an action by the indorsee against the maker of a note, the defence insisted on was that the note had been given for hits against the defendant in a lottery office, but Lord Kenyon was of opinion that the plaintiff was entitled to recover. *Winstanley v. Bowden*, 1 *Selw. N. P.* 370. 4*th ed.* And where the creditor of an insolvent obtained from his debtor, while in prison, the acceptance of a bill for his debt, and indorsed it for value and without notice, it was held, that however improper the circumstances might be under which the bill was obtained from the insolvent, yet as the indorsee had no knowledge of them, and as he was an innocent holder for a valuable consideration, he ought not to be deprived of the ordinary remedy, which the law allowed him, to recover the money which he had advanced upon the bill. *Simpson v. Pogson*, 3 *D. & R.* 567. In an action by the indorsee against the maker of a note, Lord Kenyon ruled that the defendant should not be allowed to go into evidence to show the original consideration illegal, unless he could likewise show the holder a party to that illegality. *Newby v. Smith*, 2 *Esp.* 539. (*n*). But where the indorsee takes the bill after it is due from a person who could not himself have sued upon the bill, he cannot recover upon it. *Brown v. Turner*, 7 *T. R.* 630. 2 *Esp.* 631. *S. C. Amory v. Meryweather*, 2 *B. & C.* 578. *see post, Chap.* VI. So if the indorsee takes the bill, knowing that it was given on an illegal consideration, he cannot enforce it against one of the parties to that transaction. *Steers v. Lashly*, 6 *T. R.* 61. *See ex parte Bulmer*, 15 *Ves.* 318.

Where the plaintiff, at the request of the indorsee of a note made on an illegal consideration, of which that indorsee had notice, and of which the plaintiff also had notice, indorsed the note for the purpose of giving it currency, and the note was then delivered to a person to whom, when due, the plaintiff was obliged to pay the amount, in an action against the first indorser, Lord Kenyon held that the plaintiff, having been obliged to pay the money, was entitled to recover. *Seddons v. Stratford, Peake*, 215, *sed quære*; *and see Aubert v. Maze*, 2 *B. & P.* 371. *Thompson on Bills*, 150. (*n.*)

Where it appeared that the defendant had drawn the bill under duress, in an action by an indorsee, Lord Ellenborough ruled that it was incumbent on the plaintiff to give some evidence of consideration. *Duncan v. Scott*, 1 *Campb.* 100. (*See Note* 20).

Usury.] Where the consideration of a bill or note is usurious, or where it is given as a security to cover an usurious transaction, it cannot be enforced while in the hands of immediate parties.

To make the consideration usurious there must be a loan.] If there be a stipulation for more than five per cent upon a contemplated advance, the agreement is usurious, and no transaction under it can be the foundation of a valid debt. *Per Lord Ellenborough, Masterman v. Cowrie*, 3 *Campb*, 491. But in order to render the transaction usurious, a loan, or advance of money must exist, or be contemplated. Therefore where the acceptor of a bill, dated 4th July, and due 7th September, took a premium of 6*d.* in the pound from the indorsee and holder, for payment of the bill on the 20th August, before it became due, it was held that this was no loan or forbearance, but only an anticipation of the payment of a debt, and that though an improper practice it was not usury. *Barclay v. Walmsley*, 4 *East*, 55. So where there was an agreement that London bankers should accept and pay bills of exchange drawn in the country, for a commission of 5*s.* per cent, being furnished with funds to pay the bills before they became due, Lord Ellenborough said that no advance of money was anticipated, and that unless an eventual advance of money was anticipated there could be no usury. Had an advance been made he should have left it to the jury whether the commission was a shift for obtaining more than legal interest. *Masterman v. Cowrie*, 3 *Campb.* 488. So where a broker agreed with the defendants to get their bills discounted, and that he should retain out of the money so raised, the exorbitant brokerage of 10*s.* per cent, but did not advance any money nor was his name on the bills, it was held that there was here no usurious consideration, for there was no loan by the broker. *Dagnall v.*

Wigley, 11 *East*, 43. 2 *Campb.* 33 *S. C. See Young v. Wright*, 1 *Campb.* 14. But if the party who discounted the bill had engaged that the broker should receive a sum of money beyond the regular discount to himself, this would have been usury, though he himself retained only the legal discount. *Meagoe v. Simmons*, 1 *M. & M.* 121. Where A. employed B. to get a bill discounted, and agreed to give him a sum of money beyond the legal interest, and B. procured C. to discount it, who required B. to indorse the bill, but took no more than the legal interest upon the discount, and B. then paid over to A. the proceeds of the bill, *minus* the sum which A had agreed to give him for procuring the discount, Gibbs, C. J. held that if this was a mere agreement between the parties that the bill should go out in its full security to the world, and that B. who did not appear to be an original party, should receive a compensation for getting it discounted, it would not be usury. *Jones v. Davison*, *Holt, N. P. C.* 256. Where A. having a bill for 2500*l.* at two months' date, which he could not readily negotiate in London, requested B. to give him in exchange an acceptance of B's. London banker, at the same date and for the same sum, which B. did, deducting 16*l.* 10*s.* for commission, it was held that this was a mere exchange, and not a loan and therefore not usurious. *Stoveld v. Eade*, 4 *Bingh.* 81.

To constitute usury it is not necessary that money should be actually advanced. Thus where B. gave a note to A. as a collateral security for a debt due from C. to A., and A. on the note becoming due gave time to B. in consideration of receiving more than 5*l.* per cent interest, this transaction was considered equivalent to a loan of money and was held usurious. *Manners v. Postan*, 2 *B. & P.* 343, *and see Wade v. Wilson*, 1 *East*, 195.

What will amount to usury in discounting a bill.] In discounting a bill the party discounting it deducts the interest upon the whole amount for the time which it has to run, and only pays over the balance, and this is not considered usurious; *see Lloyd v. Williams*, 2 *W. Bl.* 793; though Lord Chief Justice Eyre seems to have thought that the length of the date of a bill is in such case sufficient to afford a presumption, that the discount was intended as a cover for a loan. *Per Lord Alvanley, Marsh v. Martindale*, 3 *B. & P.* 159. Thus, suppose a bill for 10,000*l.* at ten years to be discounted in this manner, the interest for that period would amount to 5000*l.* consequently the lender would advance but 5000*l.* and at the end of ten years would receive double that sum; and if the bill, instead of being drawn for ten years were drawn for twenty, the interest would amount to the whole sum of 10,000*l.* and the lender would have nothing to advance, though he would be entitled to 10,000*l.* at the end of the time. *Per Bayley, Serj. arg.*

Marsh v. Martindale, 3 *B. & P.* 157. In discounting a bill, if it is part of the agreement that the bankers discounting it shall take interest for the whole time it has to run, and instead of paying money shall give bills or notes not payable immediately, for which no rebate is allowed, it is usurious, *Matthews v. Griffiths*, *Peake N. P. C.* 200. 1 *B. & P.* 153. (*n.*) *S. C.* *Maddock v. Hammett*, 7 *T. R.* 185. *Parr v. Eliason*, 1 *East*, 92, *and see Hutchinson v. Piper*, 4 *Taunt.* 810. But where A., a banker in the country, discounted bills at four months for B. and took the whole interest for the time they had to run, and B. on being asked how he would have the money, directed part to be carried to his account, part to be paid in cash, and part by bills in London, at certain days' sight, the transaction was held not to be usurious, the court considering the discount, and the taking the bills in London, as separate transactions. *Hammett v. Yea*, 1 *B. & P.* 144. Where a broker carried bills to be discounted, and allowed, to the person discounting, interest at the rate of 5 per cent, and in addition 1*l.* per cent on the amount of the bills towards the payment of a debt due from a third person, but which the broker thought himself bound in honour to pay, and he accounted to his principals for the whole amount of the bills *minus* lawful discount and commission, it was held that the transaction was not usurious. *Solarte v. Melville*, 7 *B. & C.* 430.

Although a party whose name is not upon a bill may carry that bill into the market, and sell it for whatever sum it will fetch, yet if he act merely as the agent of a party whose name is upon the bill, it is a discount and not a sale, and the allowance of more than 5 per cent interest will render the transaction usurious. *R. v. Ridge*, 4 *Price*, 50.

It is not unusual, in discounting bills, to give goods in part of the amount. But where a party is compelled to take goods in discounting a bill of exchange, a presumption arises that the transaction is usurious, and to rebut this presumption, evidence must be given of the value of the goods by the person who sues on the bill. *Davies v. Hardacre*, 2 *Campb.* 376. *Pratt v. Willey*, 1 *Esp.* 40. But where, although the proposal to take the goods originated with the plaintiff, the other party readily acceded to it, and said he thought he should make a profit by the transaction, Lord Ellenborough held that the presumption was, that the goods were charged beneath their true value, and that it lay upon the defendant to prove the contrary. *Combe v. Miles*, 2 *Campb.* 553. It is the province of the jury to decide, whether, on the evidence, the difference between the value of the goods charged in the discount, and that which they sold for in the hands of the party who took them is such as to warrant them in saying that the value was so much overcharged as to shew that it was a cover for usury. *Rich v. Topping*, 1 *Esp.* 177.

Receipt of commission for trouble not usurious.] On discounting a bill, a banker may lawfully take a commission for his trouble beyond the 5 per cent. interest. But all commission where a loan of money exists, must be ascribed to, and considered as an excess beyond legal interest, unless so far as it is ascribable to trouble and expense *bonâ fide* incurred, in the course of the business transacted by the persons to whom such commission is paid; but whether any thing, and how much is justly ascribed to this latter account, is always a question for the jury. *Per Lord Ellenborough, Carstairs v. Stein*, 4 *M. & S.* 201. Thus, where in an action for usury against the defendant, who was a country banker living at Sudbury, it appeared that the practice was to discount bills in London for various correspondents at Sudbury, and beyond the interest at 5*l.* per cent., to receive 5*s.* per cent. on the gross sum, without any reference to the time which the bill had to run, the jury found a verdict for the defendant under the judge's direction. *Winch v. Fenn*, 2 *T. R.* 52. (*n.*) *Ex parte Jones*, 17 *Ves.* 332. In *Carstairs v. Stein*, 4 *M. & S.* 192, the jury found, under the circumstances, that a commission of one half per cent. was not usury, and the court refused a new trial. But where it appeared that a person, in discounting bills, had charged a commission of 7*s.* 6*d.* per cent., and no evidence was given of his being put to expense, or to any considerable degree of trouble, Lord Ellenborough was of opinion that it was usurious, though the jury found against that opinion. *Brooke v. Middleton*, 1 *Campb.* 448. *And see Masterman v. Cowrie*, 3 *Campb.* 194. *Ex parte Hanson*, 1 *Madd.* 112.

Where the acceptor of an accommodation bill renewed it on receiving five per cent. interest, and two and a half per cent. commission, Lord Ellenborough held that there was no color for commission, and that the two and a half per cent. was to be considered as usurious interest. *Kent v. Lowen*, 1 *Campb.* 178.

Renewed bills, when usurious.] Where a bill or note is void on account of its being a security for usurious interest, a subsequent security for no more than the principal and legal interest, is held to be binding. *Barnes v. Hedley*, 2 *Taunt.* 184. 1 *Campb.* 165. 2 *Stark.* 238. But a party cannot recover on a new instrument which operates as a security for any usurious interest, though founded on a new settlement of account between the borrower and the lender, and though the original securities have been cancelled. *Preston v. Jackson*, 2 *Stark.* 237. To make such subsequent security good, it must appear that all payments beyond legal interest are repaid or deducted. *Wicks v. Gogerly, Ry. & Moody*, 123. And where (before the passing of the statute 58 Geo. 3. c. 93.)

a bill of exchange affected with usury, was in the hands of an innocent holder, who on being informed of the usury, took a fresh bill in lieu of it, drawn by one of the parties to the original usury and accepted by a third person for the accommodation of the other party, it was held that the holder could not maintain an action against the acceptor of the substituted bill. *Chapman v. Black*, 2 *B. & A.* 588. If a bill or note is given in part upon an illegal consideration, and several bills or notes are afterwards substituted in lieu thereof, the effect of the illegality may be confined to some only of the substituted bills or notes, and the others stand exempt. Thus, where a bill or note is given, as to half for a gaming debt, and as to the residue for money lent, and two bills or notes of equal amount are afterwards substituted for it, if the giver does any thing which may be considered an election to ascribe the gaming debt to the one, he will be liable upon the other. *Hubner v. Richardson*, *M.* 1819; *Bayley on Bills*, 409. But where several bills were given to secure several demands, some legal, and some illegal, and were none of them appropriated specifically to secure the legal demand, it was held that they could not be enforced even to the extent of the legal demand. *Harrison v. Hannel*, 5 *Taunt.* 780. 1 *Marsh.* 349. *S. C.*

Between what parties usury will avoid a bill.] Before the passing of the statute 58 Geo. 3. c. 93. it was held that usury in the concoction of a bill avoided it even in the hands of a *bonâ fide* indorsee for value, and without notice. *Lowe v. Waller*, *Dougl.* 708. 736. Till the case of *Lowes v. Mazzaredo*, *vide post*, it was supposed that where a bill had been indorsed for an usurious consideration, a subsequent *bonâ fide* indorsee might sue the acceptor or drawer of such a bill. Thus, Lord Kenyon ruled, that if a note is given on an usurious consideration, it would be void even in the hands of a *bonâ fide* holder, but that usury in any intermediate transaction respecting it (as in the indorsement) can never make it void in the hands of a *bonâ fide* indorsee. *Daniel v. Cartony*, 1 *Esp.* 274. The same point occurred in the case of *Parr v. Eliason*, 1 *East*, 92, and the Court of King's Bench held that the usury in the indorsement did not prevent a *bonâ fide* indorsee from recovering on the bill. But in *Lowes v. Mazzaredo*, 1 *Stark.* 385, Lord Ellenborough ruled that a person was not entitled to recover on a bill where he was obliged to claim through an indorsement which had been vitiated with usury, and the Court of King's Bench in the same case were of opinion, that the case of *Parr v. Eliason* was distinguishable from this, and might be supported on other grounds, and that the indorsement was entirely avoided by the statute of usury, and could not be dismissed for one purpose and retained for another. *Ibid.* In the subsequent case of *Chapman v. Black*, 2 *B. & A.* 590, the authority of *Lowes v.*

Mazzaredo was recognised by the Court of King's Bench, and it was also recognised by the Court of Exchequer in the case of *Henderson v. Benson*, 8 *Price*, 288. But although an innocent indorsee cannot make title through an indorsement vitiated by usury, yet he may sue the party who indorsed it to him, upon the bill. *See Bowyer v. Brampton*, 2 *Str.* 1155. *O'Keefe v. Dunn*, 6 *Taunt.* 315, *per Gibbs, C. J.* By stat. 58 Geo. 3. c. 93. no bill of exchange or promissory note, that shall be made or drawn after the passing of this act, shall, though it may have been given for an usurious consideration, or upon an usurious contract, be void in the hands of an indorsee for valuable consideration, unless such indorsee had, at the time of discounting or paying such consideration for the same, actual notice, that such bill of exchange or promissory note had been originally given for an usurious consideration, or upon an usurious contract.

It would appear from the following decision, that the above statute applies to the case of usurious indorsements as well as to usury in the concoction of the bill. The defendant proved a usurious bargain respecting the bill, between Ford and Sampson, at the time one of them was the holder; Lord Tenterden held, that as this statute declares that the bill shall not be void in the hands of a *bonâ fide* holder for valuable consideration, it was incumbent on the plaintiff to show, and not on the defendant to disprove, that the plaintiff was such holder for valuable consideration, and that unless the plaintiff adduced such evidence the prior statute applied, and the plaintiff could not recover. *Wyatt v. Campbell*, 13 *July*, 1827, *Chitty's Statutes*, 121. (*a*) 1 *M. & M.* 80. *S. C.*

Illegality of consideration—gaming.] By 9 Ann. c. 14. s. 1. All notes, bills, bonds, &c. or other securities or conveyances whatsoever, given, granted, drawn, or entered into, or executed, by any person or persons whatsoever, where the whole, or any part of such conveyances or securities shall be for any money or other valuable thing whatsoever, won by gaming, or playing at cards, dice, tables, tennis, bowls, or other game or games whatsoever, or by betting on the sides or hands of such as do game at any of the games aforesaid, or for the reimbursing or repaying any money, knowingly lent or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play, to any person or persons so gaming or betting as aforesaid, or that shall during such play, so play, or bet, shall be utterly void. Before this statute, it was held on the 16 Car. 2. c. 7. that where the loser drew a bill in favour of the winner upon the defendant, who accepted it, the bill could not be enforced by the winner. *Hussey v. Jacob*, 1 *Salk.* 344. 12 *Mod.* 97. *Carth.* 356. *S. C.* Where notes given for money advanced to game with, were indorsed by

the payee to an innocent indorsee for value, it was held that they could not be enforced by him against the maker. *Bowyer v. Brampton*, 2 *Str.* 1155. But in the above case it was said that the plaintiff was not without remedy, for that he might sue the payee on his indorsement; and where a bill was accepted for a gaming debt due from the acceptor to the drawer, and the drawer indorsed it for a valuable consideration, it was held that the indorsee might sue the drawer on the bill, though neither the drawer nor any person deriving title through him could have sued the acceptor. *Edwards v. Dick*, 4 *B. & A.* 212. Benson was indebted to O'Reilly for money lost at play. Duckworth, a stranger to Benson, drew a bill to the amount of that money upon Benson, in his (Duckworth's) own favor, and after indorsing it generally, delivered it to Madden, (a person employed to raise money for Benson, and who had prevailed on Duckworth to draw the bill) and Madden delivered it to O'Reilly, who procured Benson to accept it. The action was brought by an indorsee for value against Benson. The court held the plaintiff could not recover, for that the bill was drawn for the purpose and on account of the gambling debt, and Richards C. B. said that the act of parliament could not receive the narrow construction contended for on the part of the plaintiff, that an acceptance was not within it. *Henderson v. Benson*, 8 *Price*, 281. A horse-race for less than 50*l.* is within the statute. *Goodburn v. Marley*, 2 *Str.* 1159. So betting at a horse-race. *Clayton v. Jennings*, 2 *W. Bl.* 706. So a foot-race, *Lynall v. Longbothom*, 2 *Wils.* 36, and so as it seems, a game of cricket, *Jeffreys v. Walter*, 1 *Wils.* 220, for the statute applies to all games, whether of skill or chance; it is the playing for money that makes them unlawful. *Sigel v. Jebb*, 3 *Stark.* 1.

Notice to prove consideration.] As a consideration is in all cases presumed, the plaintiff is not supposed to come prepared to prove the consideration, and he cannot be put upon such proof without a previous notice from the defendant to that effect. *Paterson v. Hardacre*, 4 *Taunt.* 114. *Bayley*, 373. It is said that in the King's Bench it is not necessary to give such notice, though it is usual and proper so to do. 2 *Stark. Ev.* 253. Nor is the notice alone sufficient to throw the burthen of proof on the plaintiff. The defendant must first cast some suspicion upon the plaintiff's title, by shewing that the bill was obtained from him by force, fraud, &c. *Reynolds v. Chettle*, 2 *Campb.* 596. *King v. Milsom*, 2 *Campb.* 5. *post.* It was formerly ruled by Lord Ellenborough, that where notice had been given to the plaintiff to prove the consideration, it was necessary for him to go into the whole of his case in the first instance, and that he could not reserve the proof of consideration, as an answer to the defendant's case. *Delauney v.*

Mitchell, 1 *Stark.* 439. *Humbert v. Ruding*, *Chitty*, 512. *5th ed.* 401. *7th ed.* So in one case it was ruled by Best, C. J., that where notice has been given of the intention to dispute the consideration of a bill or note, and the plaintiff's counsel is apprised by the cross examination that the consideration is disputed, he must give his evidence in support of the bill in the first instance. *Spooner v. Gardiner*, *R. & M.* 86. But a different practice now prevails in both courts, and the plaintiff is allowed after the defendant has proved that he received no value, and has cast a suspicion upon the plaintiff's case, to go into full proof of the circumstances under which he holds the bill. *Chitty*, 512. *5th ed.* 401. *7th ed. said to be so ruled by Abbott*, *J. R. & M.* 255. (*n.*) In an action by the indorsee against the acceptor of a bill, if the defendant shews that there was originally no consideration for the bill, that throws it on the other party to show that he gave value for it. *Thomas v. Newton*, 2 *C. & P.* 606. And in order to entitle the defendant to give such evidence it is not necessary to give any notice to the plaintiff of his intention so to do. *Mann v. Lent*, 1 *M. & M.* 240.

CHAPTER VI.

OF THE TRANSFER OF BILLS AND NOTES.

What bills, &c. are transferable.
By whom.
In general.
By bankers, pledgees, or agents.
By bankrupts.
In cases of fraudulent preference.
By executors and administrators.
By infants.
By married women.
By partners.
By a person who has no title himself.
At what time.
Before the completion, or date, of the bill.
Before due, but after refusal of acceptance.
Before due, but after payment.
After due.
After due, and after payment.
In what manner.
In general, and herein of delivery.
The words, " or order."
Blank indorsement.
Indorsement in full.
Restrictive indorsement.
Of part of the money.
Cancelling an indorsement.

What bills, &c. are transferable.] A bill, or note, not containing any words rendering it transferable, as, " pay to J. S. *or order*," or " pay to *J. S. or bearer*," is not capable of being transferred, so as to give the assignee a right of action against all the antecedent parties ; but where such a bill or note is indorsed, the indorsee may sue his immediate indorser upon it, since, in legal operation, the indorser becomes a new drawer, and the indorsee the payee. *(See ante, p. 2.)* Thus, where an ex-

ception was taken, that a bill was payable to the defendant only, without the words, "or his order," and, therefore, not assignable by indorsement. Holt, C. J. said, that the indorsement did not make the drawer chargeable to the indorsee, but, that the indorsement of such a bill is good between the indorser and the indorsee, to make the former chargeable to the latter. *Hill v. Lewis*, 1 *Salk.* 133. *Nicholson v. Sedgwick*, 1 *Ld. Raym.* 181. Although it was formerly thought, that a bill or note payable to *bearer*, or to a certain person *or bearer*, was not transferable, *Nicholson v. Sedgwick*, 1 *Ld. Raym.* 180, *Horton v. Coggs*, 3 *Lev.* 299, it is now settled, that such a bill or note is negotiable. *Grant v. Vaughan*, 3 *Burr.* 1516. 1 *W. Bl.* 485. *S. C. Edie v. East India Co.* 2 *Burr.* 1224. Whether a bill or note be negotiable or not, is a question of law. *Per Lord Mansfield, Grant v. Vaughan*, 3 *Burr.* 1523. And where the law is clear, evidence of the usage of merchants on the subject is inadmissible. *Edie v. East India Company*, 2 *Burr.* 1224. 1 *W. Bl.* 298. *S. C.* But, where the matter has never been judicially determined, it seems that such evidence is admissible. *Hone v. Rawlinson, Willes*, 561. *and see Carvick v. Vickery, Dougl.* 653. (*n.*) *4th edit.*

An exchequer bill (the blank not being filled up) passes, by delivery, like a bill of exchange. *Wookey v. Pole*, 4 *B. & A.* 1. So, Prussian bonds, payable to bearer. *Gorgier v. Mieville*, 3 *B. & C.* 45. 4 *D. & R.* 641. *S. C.*

By whom — in general.] A transfer, by indorsement, will confer no title, except against the person making it, unless it is made by him who has a right to make the transfer, but a transfer by delivery may. *Bayley*, 106. An indorsement, by a person of the same name as the payee, without fraud, will not operate as a transfer of the bill. *Mead v. Young*, 4 *T. R.* 28. Where a bill is payable to A. for the use of B. the right to indorse is in A. *Evans v. Cramlington, Carth.* 5. 2 *Vent.* 307. *S. C. ante, p.* 24. Where the right to transfer is in several persons, not partners, each must indorse. *Ante, p.* 71.

After putting a bill or note in suit, the holder cannot, pending the action, transfer it, so as to give another person a right of action upon it, provided that person has notice of the suit. *Marsh v. Newell*, 1 *Taunt.* 109.

By whom,—banker, pledgee, or agent.] Where a bill or note is indorsed to a banker, or other person, for a particular purpose, and deposited with him for that purpose, he may transfer the property in such bill or note, by indorsement, to a third person, who has no notice of the want of title, as, in the following case: A. B. C. and D. were partners in a banking house at Liverpool, and C. and D. carried on a separate mer-

cantile concern in London. J. S. having accepted bills, payable at the house of C. and D. employed A. B. C. and D. to get them paid, and agreed to deposit with them good bills, indorsed by him, for the purpose of enabling them so to do. A. B. C. and D. debited J. S. in account for his acceptances, and credited him for all the bills which he deposited. Some of the bills so deposited by J. S. were remitted by A. B. C. and D. to C. and D. upon the general account between the two houses, and before any of the acceptances of J. S. became due both houses failed, and J. S. was obliged to pay his own acceptances. It was held, that the assignees of C. and D. were entitled to retain against J. S. the bills remitted to them by A. B. C. and D., for the transaction between the two houses changed the property in the bills. *Bolton v. Pullen*, 1 *B. & P.* 539. *See also Ramsbottom v. Cator*, 1 *Stark.* 228. So, a banker who holds indorsed bills from his customers, deposited with him to get in when due, may not only discount or sell them, but may likewise pledge them. *Collins v. Martin*, 1 *B. & P.* 648. *Gorgier v. Mieville*, 3 *B. & C.* 45. *Wookey v. Pole*, 4 *B. & A.* 13. But, where the party receiving such bills has notice that they were merely deposited by way of pledge, the property will not pass to him, so as to give him a right of action upon them. *Roberts v. Eden*, 1 *B. & P.* 398. And, where bills were indorsed to an agent, and the indorsement was expressed to be "for account of T. & W." the principals, and the agent pledged the same on his own account, it was held, that the principals were entitled to recover the bills in trover from the pledgee, for that the indorsement was sufficient notice, that the bills were not the property of the agent who pledged them. *Treuttel v. Barandon*, 8 *Taunt.* 100. 1 *B. Moore*, 543. *S. C.*

By whom—bankrupts.] When a person in possession of bills of exchange in his own right, becomes bankrupt, the right to transfer such bills vests, by relation to the committing of the act of bankruptcy, in his assignees, and an indorsement by the bankrupt, though before any commission issued against him, will not convey any property in the bill. *Thomason v. Frere*, 10 *East*, 418, *and see Smith v. De Witts*, 6 *D. & R.* 120. *Lacy v. Woolcot*, 2 *D. & R.* 458. *ante, p.* 68. And, where one of two several partners becomes bankrupt, such bankruptcy operates as a dissolution of the partnership, and the solvent partner cannot, in the name of the partnership, transfer a bill of which the partnership was possessed. *Ramsbottom v. Lewis*, 1 *Campb.* 279. *Abel v. Sutton*, 3 *Esp.* 110. Unless, perhaps, where the partners held the bill as trustees. *Ramsbottom v. Cator*, 1 *Stark.* 228.

It is only where the bankrupt is beneficially interested in the bill, that the property in it will pass to his assignees. Therefore, where a bill was drawn by A. payable to his own order,

and was accepted by the defendant for his accommodation, and was indorsed by A. after his bankruptcy, it was held, that as the bill would not pass to A.'s assignees, this indorsement transferred the property in the bill, and that the indorsee, for a valuable consideration, might sue the defendant. *Arden v. Watkins*, 3 *East*, 317. *Wallis v. Hardacre*, 1 *Campb.* 46. *Bruce v. Hurly*, 1 *Stark.* 23. And, where a trader, having securities in his banker's hands, to the amount of 888*l.* 16*s.* 8*d.* after a secret act of bankruptcy, drew on them a bill for 1400*l.* for his own accommodation, payable to his own order, which, after acceptance, he indorsed to the plaintiff (who knew of his partial insolvency, but not of the act of bankruptcy,) a commission of bankrupt having been afterwards taken out, it was held, that the plaintiff was entitled to sue the acceptors for the amount of the bill accepted for the accommodation, but not for the residue, for which the defendants were liable to the assignees. *Willis v. Freeman*, 12 *East*, 656. Upon the same principle, where a trader delivered over a bill, for a valuable consideration, to another, and forgot to indorse it, and, after becoming bankrupt, indorsed it, Lord Kenyon ruled that such indorsement was good, the party to whom the bill was delivered having an equitable claim, and the property in the bill not having passed to the assignees of the bankrupt. *Smith v. Pickering*, *Peake*, 50. And where a note was made for the accommodation of A, who transferred it to B. and C. without indorsement, for a valuable consideration, and afterwards became bankrupt, and died intestate; and, more than six years after the note was due, B. procured letters of administration to the effects of A. and indorsed the note to himself and C., it was held by the Master of the Rolls, that B. and C. were entitled to sue the maker. *Watkins v. Maule*, 2 *Jac. & Walk.* 237. So, where a bill had been delivered to the indorsee, with the intent to transfer the property to him, more than two months before a commission of bankrupt issued against the indorser, but the latter did not indorse the bill till within the two months, Lord Ellenborough held, that the writing of the indorsement had reference to the delivery of the bill. *Anon.* 1 *Campb.* 492. (*n.*) Whether a court of equity will direct the bankrupt, or his assignees, to indorse such a bill, *see Ex parte Greening*, 13 *Ves.* 206. *Ex parte Mowbray*, 1 *Jac. & W.* 428. *Ex parte Hall*, 1 *Rose*, 13. *Eden's Bank. Law*, 147. (*n.*) 2*d. ed.* *Ex parte Brown*, 1 *G. & J.* 407. *post*, *Chapter* XIV. Bills fraudulently obtained by the bankrupt, will not pass to his assignees. *Gladstone v. Hadwen*, 1 *M. & S.* 517.

Though, in general, the indorsemement of a bill by a trader, after he has committed an act of bankruptcy, will not transfer the property in the bill, yet such indorsement may be valid, under the 6th Geo. 4. c. 16. s. 82. by which it is enacted, that all payments really and *bonâ fide* made, or which shall

hereafter be made by any bankrupt, or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any creditor of such bankrupt, (such payment not being a fraudulent preference of such creditor) shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; and all payments really and *bonâ fide* made, or which shall hereafter be made, to any bankrupt, before the date and issuing of the commission against such bankrupt, shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, and such creditor shall not be liable to refund the same to the assignees of such bankrupt, provided the person so dealing with the said bankrupt had not, at the time of such payment by or to such bankrupt, notice of any such act of bankruptcy by such bankrupt committed.

By whom—bankrupts—fraudulent preference.] Where a trader, in contemplation of bankruptcy, voluntarily indorses a bill or note to a creditor, such a preference is fraudulent, and the indorsement will not have the effect of transferring the property in the bill or note. To make it void, the indorsement must be made in contemplation of bankruptcy. *Wheelwright v. Jackson*, 5 *Taunt.* 309. 633. *Hartshorn v. Slodden*, 2 *B. & P.* 584. *Gibbins v. Phillips*, 7 *B. & C.* 529. A trader may be in embarrassed circumstances, and compelled to suspend his payments, without contemplating bankruptcy. *Fidgeon v. Sharp*, 1 *Marsh.* 196. The rule on this subject has been lately laid down in these terms:—"If a man be in such a situation, that he must be presumed to think bankruptcy probable, then, if he makes a payment, with a view to put one creditor in a better situation than the rest, such payment cannot be supported." *Per Bayley, J. Poland v. Glyn*, 4 *Bing.* 22. *(n.)* It is not sufficient alone, that the bill, or note, has been indorsed in contemplation of bankruptcy, but it must appear to have been indorsed voluntarily; and if the debtor be *bonâ fide* pressed by his creditor to make such a transfer, it is good. *See Thompson v. Freeman*, 1 *T. R.* 155. *Smith v. Payne*, 6 *T. R.* 152. *Hartshorn v. Slodden*, 2 *B. & P.* 583. *Thornton v. Hargreaves*, 7 *East*, 544. *Crosby v. Crouch*, 2 *Campb.* 166. 11 *East*, 256. *S. C.* Thus, where in contemplation of bankruptcy, a debtor, without being pressed, sent three checks to his creditor's counting house, but, before the delivery of those checks, a demand was made on the debtor by the creditor, Lord Ellenborough held, that, though there was an intention of giving a voluntary preference, yet that intention not having been consummated, the payment was good. *Bayley v. Bullard*, 1 *Campb.* 416.

By whom—executors and administrators.] Where the holder

of a bill or note dies, the interest in it vests in his executors or administrators, who may transfer it by indorsement. *Rawlinson v. Stone*, 3 *Wils.* 1. *Willes*, 559. 2 *Str.* 1260. *S. C. Watkins v. Maule*, 2 *Jac. & Walk.* 243. *ante*, *p.* 55.

By whom — infants.] As the indorsement of a bill or note by an infant is a voidable act only, and not absolutely void, the holder of a bill may make a good title, through the indorsement of an infant, though the latter, if sued as indorser, may insist upon his infancy as a defence. *Taylor v. Croker*, 4 *Esp.* 187. *Grey v. Cooper*, E. 22. *G.* 3. 1 *Selw. N. P.* 287. 4*th ed. ante*, *p.* 56.

Married women.] A married woman cannot transfer any interest in a bill or note by her indorsement. *Barlow v. Bishop*, 1 *East*, 432, *ante*, *p.* 58. unless an authority from her husband can be presumed. *Cotes v. Davis*, 1 *Campb.* 485. *ante*, *p.* 58. Or, unless she can be considered in law as a *feme sole*. *Ante*, *p.* 58. Where a bill or note is indorsed to a *feme sole*, who afterwards marries, or to a *feme covert*, the right to transfer such bill or note vests in her husband. *Ibid.*

By whom — partners.] In general, one partner has authority to transfer bills and notes, the property of the partnership, by indorsing them in the name of the partnership. *Ante*, *p.* 59. And it has even been held, in the absence of fraud, that one partner may transfer a bill, belonging to the partnership, in payment of his separate debt. *Swann v. Steele*, 7 *East*, 210. *Ridley v. Taylor*, 13 *East*, 175. *ante*, *p.* 64. *and see the other cases cited, from p.* 60. *to p.* 70. But, the authority of one partner to indorse in the partnership name, ceases on the dissolution of the partnership; and an indorsee, for valuable consideration, but with notice of the dissolution, cannot recover on such a bill. *Ante*, *p.* 67. In case of the bankruptcy of one of several partners, the right to indorse is vested in the solvent partner, and the assignees of the bankrupt jointly. *Ante*, *p.* 70.

By whom — by a person who has no title himself.] In many cases, a person, who is not entitled to sue upon a bill or note himself, may confer on another a good title to sue. Thus, where the holder of a bill who gave no value for it, indorses it to another for a valuable consideration, with notice of his title, the latter may maintain an action upon the bill against all the parties to it, though the former could not have sued the person from whom he received it, without consideration. *Ante*, *p.* 104. So, unless in cases of bills made void by statute, the holder of a bill, who, on account of some illegality or fraud, could not have enforced the bill against any of the prior parties, may, by transferring the bill to another person, for a valuable consideration, and with-

out notice of the illegality or fraud, entitle such persons to sue upon the bill. *Ante, p.* 116. *and, see post, Chapter* XV. *of Lost and Stolen Bills.*

At what time—before the completion or date of the bill.] Where a person indorses a bill before it is complete, he will not be allowed to take advantage of that fact, in an action brought against him. Thus, where the defendant indorsed his name on five blank forms of promissory notes, which were afterwards filled up, and discounted by the plaintiff, who knew them to have been in blank at the time of the indorsement, it was held that the defendant was liable as indorser. Lord Mansfield observed, that the indorsement on a blank note is a letter of credit for an indefinite sum, and that it does not lie in the mouth of the indorser to say, that the indorsement is not regular. *Russell v. Langstaffe, Dougl.* 496. 514. *fourth ed.*

One of several partners drew a bill in blank in the partnership name, and payable to their order, and, after indorsing it in the partnership name, delivered it to a clerk to be filled up, according to the urgencies of business. The partner who drew the bill then died, and the clerk filled it up, and inserted a date, prior to the date of the death. Lord Ellenborough said, that this case came within the principle of *Russell v. Langstaffe*; that the power must be considered to emanate from the partnership, and that, therefore, after the death of the partner, the bill might still be filled up, so as to bind the survivors. *Usher v. Dauncey,* 4 *Campb.* 97.

So, a post dated bill may be indorsed before the day on which it bears date. Thus, where the defendant, on 4th May, drew a bill, dated the 11th May, and delivered it to the payee, who, after indorsing it on the 5th, died on the same day, it was held, that the indorsee was entitled to recover. *Pasmore v. North,* 13 *East,* 517. *See also Snaith v. Mingay,* 1 *M. & S.* 87. *Crutchley v. Clarance,* 2 *M. & S.* 90. *ante, p.* 22.

By 17 Geo. 3. c. 30. s. 1. bills and notes, for the payment of a less sum than 5*l.* shall not be indorsed before the making thereof. *Ante, p.* 5.

At what time—before due, but after refusal of acceptance.] Where a bill is presented for acceptance and refused, and the holder neglects to give notice of non-acceptance to the drawer, and before the bill becomes due indorses it for a valuable consideration without notice of the dishonour, the indorsee is entitled to recover against the drawer. *O'Keefe v. Dunn,* 6 *Taunt.* 305. 1 *Marsh.* 613. 5 *M. & S.* 282. *S. C. affirmed on error.* But if the indorsee had notice of the facts of non-acceptance and want of notice to the drawer, it would be otherwise. Noting for non-acceptance would be notice on the face of the bill. *Per Dallas, J.* 6 *Taunt.* 309. *and see S. P.*

per Bayley J. Crossley v. Ham, 13 *East*, 502. 5 *M. & S.* 289. Clark in America drew two bills on Dickerson in London, at sixty days' sight, payable to the defendant or order, who indorsed them for the accommodation of Clark, by whom they were paid to Parry, who transmitted them to F. & B. his agents in London, with directions to make a payment to the plaintiff. The bills arrived in London on the 26th of April, and were refused acceptance. On the 14th of April Parry agreed to exonerate the defendant from paying one of the bills in case the other were paid, which was paid. On the 6th of June F. & B. delivered over to the plaintiff the other bill, informing him of the presentment for acceptance, and refusal, and that he must take it under all the existing circumstances and liable to all the infirmities that attended it. The plaintiff having sued the defendant on the bill, it was held that the plaintiff took it subject to the agreement between Parry the then holder and the defendant, whereby payment of one of the bills was agreed to be received as payment of both, and that one of the bills having been in fact paid, the plaintiff was not entitled to recover on the other. *Crossley v. Ham*, 13 *East*, 498; *and see Roscow v. Hardy*, 12 *East*, 434.

At what time — before due — but after payment.] While a bill of exchange is running it is in a negotiable state, and if it is paid and afterwards indorsed for a valuable consideration and without notice, the indorsee may sue on such a bill. Thus where four days before a note became due, some person ununknown came to the bankers where it lay, paid it, and carried it away without its being cancelled or any memorandum made upon it, and afterwards, and before it was due, it came into the hands of the plaintiff, who sued the payee, Lord Ellenborough said that payment meant payment in due course and not by anticipation; and that as the plaintiff had received the note before it was due, there was nothing to awaken his suspicion, and that he was entitled to recover. That it was the duty of bankers to make some memorandum on bills and notes which have been paid; but that if they do not, the holders of such securities cannot be affected by any payment made before they are due. *Burbridge v. Manners*, 3 *Campb.* 194.

At what time — after due.] A bill or note may be transferred after it is due, so as to convey a good title to the party taking it. *Mutford v. Walcot*, 1 *Ld. Raym.* 575. *Dehers v. Harriott*, 1 *Show.* 163. But he who takes a bill after it has arrived at maturity, takes it subject to all the defences that could have been made by any previous holder; for the bill being unpaid, its date is notice to him sufficient to put him on enquiry, but if he takes the bill before it is due, he takes it not subject to the same infirmity of title, because he then takes it

without notice of any suspicious circumstances that may break in upon his remedy against any former holder. *Per Gibbs, C. J. O'Keefe v. Dunn*, 6 *Taunt.* 315. The same rule is laid down by Mr. Justice Buller in the following terms. "There is this distinction between bills indorsed before and after they become due. If a note indorsed be not due at the time, it carries no suspicion whatever on the face of it, and the party receives it on his own intrinsic credit. But if it is over due, though I do not say that by law it is not negotiable, yet certainly it is out of the common course of dealing, and does give rise to suspicion. Still stronger ought that suspicion to be, when it appears on the face of the note to have been noted for non-payment." *Per Buller, J. Brown v. Davies*, 3 *T. R.* 82. Thus where a note due upon the 13th Nov. was indorsed on the 6th December, in an action by the indorsee against the maker, it was held that evidence was admissible to show that the note had been paid as between the defendant and the original payee from whom the plaintiff received it. *Brown v. Davies*, 3 *T. R.* 80. And it is said that where there are any circumstances of fraud in the transaction, and a bill comes into the hands of the plaintiff after it is due, the slightest circumstances are sufficient to raise the presumption that the indorsee was acquainted with the fraud. *Per Buller, J. Taylor v. Mather*, 3 *T. R.* 83. *(n.)* In *Tinson v. Francis*, 1 *Campb.* 19. *ante, p.* 112, it was ruled by Lord Ellenborough, that after a bill or note is due, it comes disgraced to the indorsee, and it is his duty to make inquiries concerning it. If he takes it, though he gives a full consideration for it, he takes it on the credit of the indorser, and subject to all the equities with which it may be incumbered. *See Charles v. Marsden*, 1 *Taunt.* 224. *ante, p.* 112, *Lee v. Zagury*, 1 *B. Moore*, 556. So where the defendant accepted a bill for the differences on a stock-jobbing transaction, drawn by the broker, who indorsed it, after it was due, to the plaintiff for a valuable consideration, it was held that as the broker himself could not have sued upon the bill, the plaintiff was not entitled to recover. *Brown v. Turner*, 7 *T. R.* 630. *Amory v. Merryweather*, 2 *B. & C.* 573. *Goggerley v. Cuthbert*, 2 *N. R.* 170. When a bill is indorsed after it is due, the indorsee stands in the situation of the indorser from whom he received it, and if the latter could have sued upon it, the former may maintain the action. Thus, where in an action against the acceptor of a bill by an indorsee who had taken it after it had become due, it was proposed to show as a defence that the bill had been accepted for a debt contracted in a smuggling transaction, and that although it had been indorsed for value before it became due to a *bonâ fide* holder, yet that it had been indorsed by him to the present plaintiff after it was due; Lord Ellenborough ruled that if the plaintiff received the bill from a person who might himself have maintained an action upon it, the circumstance of the indorse-

ment to him having been made after the bill had become due, was insufficient to let in the proposed defence; and on a motion for a new trial, the court of K. B. was of the same opinion. *Chalmers v. Lanion*, 1 *Campb.* 393. Where a bill which had been deposited with the plaintiffs' bankers, in London, as a collateral security, came again into the hands of their customer at the time it became due, and was dishonored, but was subsequently returned to the plaintiffs, Lord Ellenborough was of opinion, that when the bill was returned to the plaintiffs, they recurred to their former rights, and he therefore held that the fact of the customer having no right to sue upon the bill at the time of returning it to his bankers, furnished no defence. *Bosanquet v. Dudman*, 1 *Stark.* 1., *and see Watkins v. Maule*, 2 *Jac. & Walk.* 244. So where the plaintiffs, the holders of a bill, indorsed it to one Lord, who held it for three months after it became due, and then after receiving satisfaction from the drawer, called on the plaintiffs, who took it up; Lord Ellenborough was of opinion, that since the plaintiffs were originally indorsees for a valuable consideration, they stood in a better situation than an indorsee who took a bill for the first time after it became due. *Buzzard v. Flecknoe*, 1 *Stark.* 333.

Where in an action by an indorsee of an overdue bill against an indorser, the defendant proposed to give in evidence the books of one Powell, the person from whom the plaintiff had received the bill after it became due, in order to show the amount of the balance between Powell and himself, beyond which the plaintiff could not claim; Lord Ellenborough was of opinion, that any entry made by Powell at the time, and accompanying his act, would be evidence, in whatever book it was made, but that an entry or declaration, which did not accompany the act, was not admissible, for it might have been made for the very purpose of being used in evidence. *Collenridge v. Farquharson*, 1 *Stark.* 260.

At what time a bill or note payable on demand is to be considered as a bill or note over-due, does not appear to be decided. In *Banks v. Cowell, cited* 3 *T. R.* 81, it is said that Mr. Justice Buller held that a note payable on demand, and indorsed a year and a half after the making, was indorsed after it was due, and that therefore the indorsee took it subject to the infirmities of the indorser's title; but in a late case it was the opinion of Bayley, Holroyd, and Littledale, JJ., that a note payable on demand was not to be considered as over due without some evidence of payment having been demanded and refused. *Barough v. White*, 4 *B. & C.* 327. *See Roberts v. Eden*, 1 *B. & P.* 398. *Gascoyne v. Smith, M. & Y.* 348. The rule with regard to a bankers' check appears to be this. It is the duty of the person who receives it to present it for payment on the same or the following day, and a person taking it after that period,

will take it subject to the infirmities of the title of him from whom he received it, as in the case of an over-due bill. *Down v. Halling*, 4 *B. & C.* 330. 6 *D. & R.* 455. *S. C.* But where the drawers of a check did not issue it until nine months after it bore date, upon a consideration which afterwards failed, as between them and the person to whom they delivered it, it was held that it was not competent to them to set up this circumstance as a defence in an action by a subsequent holder for a valuable consideration, and without notice. *Boehm v. Stirling*, 7 *T. R.* 423. (*Note* 21.)

At what time—after due and after payment.] Where a bill or note is paid on becoming due, it cannot be reissued so as to charge any person who would not otherwise be liable. Thus, where Brown drew a bill upon the defendant, payable to Hodgson or order, which was accepted by the defendant, indorsed by Hodgson, and when due returned to Brown, and by him paid, and afterwards by him transferred to the plaintiffs, it was held that the plaintiffs could not recover, for that if the bill was negotiable Hodgson would be liable, for which there was no colour. *Beck v. Robley*, 1 *H. Bl.* 89. (*n*). But where the reissuing of the bill would not have the effect of prejudicing any of the indorsers, it may be reissued after payment by *the drawer*. Thus, where the drawer of a bill, *payable to his own order*, and indorsed by him to T., and by T. to B., upon the bill being dishonored paid the amount to B., who struck out his own and T.'s indorsement, and returned it to the drawer, who afterwards passed it to the plaintiffs, it was held that the plaintiffs might afterwards recover against the acceptor. *Callow v. Lawrence*, 3 *M. & S.* 95. *And see Hubbard v. Jackson*, 4 *Bingh.* 390. 1 *Moore & Payne*, 11. *S. C. S. P.* A bill of exchange is negotiable *ad infinitum* until it has been paid or discharged on behalf of *the acceptor*. *Per Lord Ellenborough*, 3 *M. & S.* 97.

In what manner bills, &c. may be transferred.] Bills and notes payable to order are transferred by indorsement and delivery; bills and notes payable to bearer, or payable to order, and indorsed generally, are transferable by delivery. *Gibson v. Minet*, 1 *H. Bl.* 605. Where a bill or note is transferred by delivery only, the party transferring it cannot be sued upon it. *Ante p.* 42. No particular form of words is requisite to constitute an indorsement; writing the name of the party indorsing is sufficient. *Lambert v. Oakes*, 1 *Ld. Raym.* 443. But a promise to indorse will not operate as an indorsement. *Maxon v. Pulling*, 4 *Campb.* 50. Although the writing of his name by the party transferring the bill, is usually made on the back of the bill, yet if made in writing on the face of it, it is of the same effect, and will be taken and accepted as an indorsement.

R. v. Bigg, 1 *Str.* 18. *Yarborough v. the Bank of England*, 16 *East*, 12. *And see Tidd's Pr.* 27. (*n.*) 8*th Ed.* An indorsement written in pencil is a good indorsement within the usage and custom of merchants. *Geary v. Physic*, 5 *B. & C.* 234. 7 *D. & R.* 653. *S. C.* Writing a private mark upon a bill will not operate as an indorsement. *Ex parte Shuttleworth*, 3 *Ves.* 368. *Fenn v. Harrison*, 3 *T. R.* 757. When before his death the holder of a note writes upon it, "I give this note to A." it is a testamentary indorsement which may be proved. *Per Lord Chancellor, Chaworth v. Beech*, 4 *Ves.* 585. *See Woodbridge v. Spooner*, 3 *B. & A.* 233.

An indorsement of a bill or note for the payment of less than 5*l.* must be attested by one subscribing witness, and must mention the name and place of abode of the indorsee, and bear date at or before the time of making it. 17 *Geo.* 3. *c.* 30. *s.* 1. *Ante, p.* 5. Where bills are specially indorsed, it has been held that the property in them does not pass before delivery. *R. v. Lambton*, 5 *Price*, 428. And in general, a delivery is necessary to complete the transfer, whether the bill is indorsed generally or specially. Thus where a note was placed in the hands of a banker to be delivered to the payee on certain conditions being fulfilled, Lord Ellenborough was of opinion that no cause of action accrued to the payee until the time when gave up the note. *Savage v. Aldren*, 2 *Stark.* 232. (*note* 22.)

The delivery of a bill where indorsement was necessary and has been omitted by mistake, will entitle the party to whom it is delivered, to call for an indorsement. *Smith v. Pickering*, *Peake*, 50. *ante, p.* 128.

Upon the transfer of a bill drawn in sets, each part must be delivered to the person in whose favor the transfer is made; otherwise, the same inconveniences may follow which would ensue upon a neglect to deliver each of them to the *payee*. *Bayley*, 129.

In what manner — the words "or order."] Where a bill or note is originally made negotiable by the insertion of the words "or order," it is not necessary that those words should be repeated in the indorsements, in order to continue the negotiability. Thus, where a note was made payable to S. or order, and by him indorsed to W. (without saying "or order,") and by W. to the plaintiff, on demurrer, it was objected that W. could not assign, but the declaration was held to be good; for if the original bill was assignable, then whosoever it is assigned to has all the interest in the bill and may assign it as he pleases. *More v. Manning*, *Com.* 311. So where an indorsement was "pay the contents to L. A.," and the declaration stated it to be to L. A. *or order*, it was held no variance, it being the legal import of the indorsement. *Acheson v. Fountain*, 1 *Str.* 557. The same point was ruled in a later case after much consideration.

Edie v. East India Co., 2 *Burr.* 1216. 1 *W. Bl.* 295, *S. C.* So where a bill is indorsed, "pay to the order of A. B." A. B. may himself sue upon the bill as indorsee. *Fisher v. Pomfret*, *Carth.* 403.

In what manner — blank indorsement.] An indorsement which mentions the name of the person in whose favour it is made, is called a full indorsement; an indorsement which does not, a blank one. *Bayley*, 100. A bill or note indorsed in blank resembles a bill payable to bearer, and may be transferred from one holder to another by delivery merely. *Peacock v. Rhodes*, *Dougl.* 611, 633. 4*th ed.* Where a bill is indorsed in blank, a power is given to the indorsee of specially appointing the payment to be made to a particular individual, by writing the name of that person over the blank indorsement, but the act of writing such name will not render the party writing it liable as an indorser. *Vincent v. Horlock*, 1 *Campb.* 442. *Ex parte Isbester*, 1 *Rose*, 20. Where the first indorsement, by the payee, is blank, the bill continues transferable by delivery, although there may be subsequent full or special indorsements. In an action by the indorsees of a bill against the acceptor, it appeared that the bill was indorsed in blank by the payee, and that after several indorsements it had come to one Jackson, under a special indorsement to him or order. Jackson sent it to Muir and Atkinson, who discounted it with the plaintiffs, but Jackson never indorsed it. It was contended that this special indorsement restrained the negotiability of the bill, and that the plaintiffs could not recover without proving an indorsement by Jackson, but Lord Kenyon said that the fair holder of a bill may consider himself the indorsee of the payee, and strike out all the other indorsements. *Smith v. Clarke*, *Peake*, 225. 1 *Esp.* 180. *S. C.* So the indorsee may in his declaration state himself to be the indorsee of any prior indorser, who indorsed it in blank without noticing the intermediate indorsements between that indorser and himself. *Chaters v. Bell*, 4 *Esp.* 210. *see post.* It was formerly held that an indorsement in blank did not entitle the person taking the bill to sue upon it without inserting his own name before the indorsement; *Clarke v. Pigot*, 1 *Salk.* 126. 12 *Mod.* 193. *S. C;* but it is now clear that such an insertion is unnecessary. An indorsement in blank conveys a joint right of action to as many as agree in suing on the bill. *Per Lord Ellenborough*, *Ord v. Portal*, 3 *Campb.* 240. *Attwood v. Rattenbury*, 6 *B. Moore*, 579. *and see post*, *Chap.* XII.

In what manner — indorsement in full.] A blank indorsement makes the bill payable to bearer, but by a special indorsement the holder may stop the negotiability. *Per Lord Mansfield*, *Ancker v. Bank of England*, *Dougl.* 639, 4*th ed.* An in-

dorsement in full or special indorsement is, where the name of the indorsee is inserted as "pay the contents to A. B.," "C. D."

In what manner — restrictive indorsements.] The payee may check the currency of a bill or note by giving a bare authority to receive the money, as "pay to my servant for my use." *Per Wilmott, J. Edie v. East India Co.* 2 *Burr.* 1227. So where the payee of a bill indorsed it, "the within must be credited to Captain D. value in account," it was held that this was a special indorsement which restrained the negotiability of the bill. *Ancker v. Bank of England, Dougl.* 637. *4th ed.* A bill was drawn, payable to the plaintiff or order, on the defendants, and was thus indorsed by the payee, "Pay the within to C. & R. upon my name appearing in the Gazette as Ensign in any regiment of the line, if within two months from this date." The defendants accepted the bill thus indorsed; C. & R. negotiated it, and it came into the hands of the Bank of England, to whom the defendants paid it. Plaintiff's name never appeared in the Gazette, and he therefore sued the defendants on the bill, and the Court of Common Pleas held that he was entitled to recover. *Robertson v. Kensington,* 4 *Taunt.* 30. Where certain bills were indorsed to De Roure, as agent to Treutell and Wurtz, in the following form, "Pay to J. P. De Roure, Esq. or order, for account of Messrs. T. and W." and De Roure without the authority of T. and W. indorsed them to defendants as a security on his own account, it was held that under these circumstances the defendants had sufficient knowledge that the bills were not the property of De Roure, and that T. and W. were entitled to recover the bills in trover against the defendants. *Treuttel v. Barandon,* 8 *Taunt.* 100. Where the plaintiff, the indorsee of a bill, indorsed it in this form, "Pay to S. W. or his order for my use," and S. W. discounted the bill with his bankers, to whom he indorsed it, and who received the proceeds and applied them to the use of S. W., in an action by the plaintiff against the bankers for money had and received, it was held that he was entitled to recover, for that the indorsement was restrictive. *Segourney v. Lloyd,* 8 *B. & C.* 622. (*See Note* 23.) When agents indorse foreign bills for the mere purpose of transmitting them, without intending to incur responsibility for the payment, it is their practice to add to the indorsement the words *sans recours. Goupy v. Arden,* 7 *Taunt.* 160, 163. (*Note* 24.)

Although in general a parol agreement is not admissible to control the operation of a bill or note, *vide post, Chap.* XII. yet it has been ruled that where the indorsee of a bill takes it under an agreement not to sue the indorser, he cannot sue such indorser, though the indorsement be unqualified. *Pike v. Street,* 1 *Moody and Malkin,* 226.

In what manner — of part of the money.] Where the drawer of a bill has paid part, it may be indorsed over for the residue, otherwise not, because it would subject him to variety of actions. *Per Gould, J. Johnson v. Kennion*, 2 *Wils.* 262. Thus where A. having a bill upon B., indorsed part of it to J. S., who brought his action for that part, upon demurrer it was held that the action would not lie, for where a man's contract has subjected him only to one action, it cannot be divided so as to subject him to two. *Hawkins v. Cardee*, 1 *Salk.* 65. *Carth.* 466. 1 *Lord Raym.* 360. *S. C.* (*Note* 25.)

Cancelling an indorsement.] Where an indorsement is cancelled by mistake, it will not have the effect of discharging the indorser. Thus where certain persons, for the honour of a firm, whose names appeared as the indorsers of a bill, paid it, and struck out the names subsequent to those of the firm, but finding that the indorsement of the firm was a forgery, immediately gave notice of that fact to the parties from whom they received the bill, and that the indorsements had been struck out by mistake, it was held that this cancelling would not have the effect of discharging the indorsers whose names were struck out. *Per Abbott, C. J.* "The striking out an indorsement by mistake cannot in our opinion discharge the indorser; it would be most mischievous to commerce to hold that it should." His lordship then stated the case of *Fernandez v. Glynn*, 1 *Campb.* 426. *vide post*, and continued, "If indeed it should appear that the defendants [the holders] are put to any additional expense, by proof or otherwise, on account of this improvident act of the plaintiffs [who discounted the bill], which is very unlikely, they may possibly maintain a special action on the case to recover a compensation to the extent of the injury they sustain." *Wilkinson v. Johnston*," 3 *B. & C.* 428.

CHAPTER VII.

OF THE PRESENTMENT OF BILLS AND NOTES.

Presentment for acceptance.
In general.
Within what time.
How long the bill should be left with the drawee for acceptance.
Presentment for payment.
By whom.
To whom.
Where.
Of a bill accepted generally.
Of a bill accepted payable at a banker's or other place only, and not otherwise or elsewhere.
Of a bill accepted payable at a bankers, &c. since stat. 1 & 2. G. 4. c. 8., not saying "there only," &c.
Of a bill drawn payable in London, &c., and accepted since stat. 1 & 2. G. 4. c. 78. payable at a banker's or other place, not saying "there only," &c.
Of notes payable at a particular place in the margin.
Of notes payable at a particular place in the body.
Of notes payable at different places.
When.
Of bills and notes payable after date.
Of bills and notes payable after sight.
Of bills and notes payable on demand.
Of bills and notes becoming due on Sunday, Christmas day, Good Friday, or fast day.
Hours within which presentment must be made.

Presentment for Payment.
Days of grace.
In general.
Upon what bills.
At what time on the last day of grace a bill or note must be presented.
Usance.
Excused—when.
By part payment or subsequent promise to pay.
By inevitable accident.

Presentment for acceptance—in general.] In the case of a bill or note payable at a certain time after sight, acceptance is necessary for the purpose of fixing the time of payment; but in all other cases, though it is usual, it is not necessary, in order to render the bill available against the other parties to it, to present it for acceptance. *Goodall v. Dolly*, 1 *T. R.* 713. *O'Keefe v. Dunn*, 6 *Taunt.* 315. 1 *Marsh.* 621. *S. C.* 5 *M. & S.* 289. *Orr v. Maginnis*, 7 *East*, 362. It is, however, usual and advisable to present all bills for acceptance, since in case of acceptance, the additional security of the acceptor is obtained, or in case of refusal the holder may immediately sue the other parties on the bill. *Ante, p.* 73. Where the bill is in the hands of an agent also, it is highly adviseable that it should be presented for acceptance without delay, since if not presented till due and then dishonored, the holder may lose his chance of recovering against other parties, who may have become insolvent since the time when the bill might have been presented for acceptance: and the agent would, as it seems, in such case be liable to his principal to the extent of such damage. *Poth. pl.* 128. *Mar.* 46. (*Note* 26.) It was said in *Johnson v. Collings*, 1 *East*, 99, to be the practice at Bristol, not to present bills or to have them presented for acceptance. If a person hold a bill not addressed to any particular individual, but accompanied with a letter of advice, mentioning the person on whom the bill is drawn, it is said that the bill should be presented to the person mentioned in the letter of advice, who may thereupon accept the bill, and that if he refuses to do so, it may be protested for non-acceptance. *Marius*, 142, 3; *and see Gray v. Milner*, 8 *Taunt.* 739. 3 *B. Moore*, 90. *S. C. ante, p.* 22.

Where a promissory note was made, by which A. B. promised to pay, ten days after sight thereof, to C. D. or order, the sum of 259*l.*, with interest, at the rate of two and a half per centum per annum, to the day of *acceptance*; it was held, that

the word *acceptance* meant *sight*. *Sutton v. Toomer*, 7 *B. & C.* 516.

Presentment for acceptance—within what time.] There is no particular time within which a bill, payable at sight, or at a certain time after sight, must be presented. (*Note* 27.) The only rule on the subject is, that it must be presented within a reasonable time; and what is to be deemed a reasonable time, must depend upon the circumstances of each particular case. *Muilman v. D'Eguino*, 2 *H. Bl.* 569. On the 5th of March, certain bills payable at sixty days after sight were drawn by Goodwin in England, on Palmer at Calcutta. On the following day the payee indorsed them to the plaintiffs, who were directed by B. & Co. of Paris to procure Bills on India. On the 30th of April, the bills were indorsed by the plaintiffs, (who in the meantime had received advice from B. & Co.) to the order of certain persons at Calcutta. On the 22d May, the bills were sent to India, and arrived on 3d October. On 5th October, the holder wrote to the drawee, who on the 17th refused to accept. Some of the bills were protested on the 29th October, the other on the 18th November. One of the questions left to the jury was, whether the bills were presented to the drawee in reasonable time, which included the question, whether they were sent from England in reasonable time. The jury having found in the affirmative, the court of C. P. refused to disturb the verdict. *Per Eyre, C. J.* "The course of the argument in this case does not call upon the court to lay down any new rule as to bills of exchange, payable at sight, or a given time after; if it did, and it were necessary, I should feel great anxiety not to clog the negotiation of bills, circumstanced like the present. It would be a very serious and difficult thing to say, that a person buying a foreign bill, in the way that these bills were bought, should be obliged to transmit it by the first opportunity to the place of its destination. The courts have been very cautious in fixing any time for an inland bill, payable at a certain period after sight, to be presented for acceptance; and it seems to me more necessary to be cautious, with respect to a foreign bill payable in that manner. If, instead of drawing their foreign bills, payable at usances, in the old way, merchants choose for their own convenience to draw them in this manner, and make the time commence when the holder pleases, I do not see how the courts can lay down any precise rule on the subject. I think, indeed, that the holder is bound to present the bill in reasonable time, in order that the period may commence from which the payment is to take place. The question, what is a reasonable time, must depend on the particular circumstances of the case; and it must always be for the jury to determine, whether any laches is imputable to the plaintiff. With re-

spect to the point of notice of the non-payment being delayed, I think there is no colour for that part of the argument, for I hold that it is sufficient for the party in *India* to send notice by the first regular ships going to *England*, and that he is not bound to accept the uncertain conveyance of a foreign ship." *Muilman v. D'Eguino*, 2 *H. Bl.* 565. On the 12th May 1815, bills were drawn upon Gould & Co. merchants at Lisbon, at thirty days after sight; the payees (the defendants) indorsed them to the plaintiffs, who were merchants at Paris, who indorsed them to Ricci and Son, merchants at Genoa. The bills were presented for acceptance on the 22d August and dishonoured. The defendants contended that the bills ought to have been sooner presented for acceptance, and not sent round from Paris to Italy, by which the presentment had been many months delayed; and that if the bills had been presented earlier, they would have been payable before the drawees ceased to honour the drawer's demands. The jury, however, found for the plaintiffs, and the court refused a new trial, on the authority of the case of *Muilman v. D'Eguino*, being of opinion that the parties were not guilty of laches, in putting the bill into circulation before it was presented for acceptance. *Goupy v. Harden*, 7 *Taunt.* 159. 2 *Marsh.* 454. *Holt*, 342. *S. C.*

In an action for goods sold and delivered, it appeared that the defendant had, at Windsor, on Friday, the 9th of the month, delivered to the plaintiff, for the goods, a bill on certain bankers in London, at one month after sight. The bill was presented for acceptance on the 13th of the same month; but the country bankers having failed on that day, acceptance was refused. The jury found for the plaintiff, and the court refused to disturb the verdict. *Per Gibbs, C. J.*, "The defendant's argument on the first point would go the extent, that the holder of a bill, payable after sight, is bound to transmit it for acceptance without putting it into circulation at all. But even if it were a case in which it required to give instant notice, it has been repeatedly determined that the holder of a bill is not bound to send it on the same day that he receives it, and there was no post to London on the Saturday. He might have sent it on the Sunday, but I do not go upon that ground. The holder must present a bill payable after sight within a reasonable time, but it is in the power of the holder to postpone the day of payment by postponing the date of the presentment for acceptance; and he certainly may put the bill into circulation if he will. In the recent case of *Goupy v. Harden* (*vide supra*), the bills were put into circulation; here it does not appear what was done with the bill in the interval. The question on these bills drawn at sight, certainly is left very loose by the cases. The result of the cases is undoubtedly that which I have stated, and Eyre, C. J. in *Muilman v. D'Eguino*, (*vide*

supra,) says, that it is under all circumstances a question for the jury, whether such a bill was presented in reasonable time. Buller J. in the same case rather narrows that doctrine; and though he agrees that if it were in circulation a twelvemonth, there would not be laches, he says, that, if instead of putting it into circulation the holder were to lock it up for any length of time, he would be guilty of laches. Is this, therefore, a case in which the plaintiff can be said to lock up the bill for any length of time? If we were to grant a new trial the result would come at last to this; it would be a question for the jury, whether there has been a default to present the bill within a reasonable time. That question has been already left to the jury." *Fry v. Hill*, 7 *Taunt.* 397.

In the following case a distinction was taken between common bills payable after sight, and bills drawn by bankers in the country, on their correspondents in London. On 12th Nov. 1825, a bill payable twenty days after sight, was drawn by Elford & Co., bankers at Plymouth, on their correspondents, Hoare & Co. in London, payable to Cowling, indorsed by the defendants. The traveller of the plaintiff received the bill from the defendants on the 17th November, and dispatched it to Bristol, where the plaintiff carried on trade, with his usual weekly parcel, on the 24th November. It arrived too late for the London post on the 25th. There was no post on the 26th. The 27th was Sunday, and the bill reached London on the 29th. When presented for acceptance it was dishonored, Elford & Co. having stopped on the 24th. *Per Lord Tenterden, C. J.* "The only question in this case is, whether the plaintiffs or their servant used due diligence in forwarding the bill in question for acceptance. This is a mixed question of law and fact, and in expressing my own opinion, I do not wish at all to withdraw the case from the jury. The bill was certainly a considerable time in the hands of the plaintiffs and their traveller, long enough to enable them, if the bill had been immediately sent to them, and forwarded by them in the regular course of business to London, to get it accepted three or four days before the drawers refused to accept such bills. In considering whether this be an unreasonable delay, we must look to the character of the bill and the course of dealing, as far as we can collect it with respect to such bills. The bill is drawn by bankers in the country on their correspondents in London; and the defendants, who are themselves bankers, held it for some days without sending it to London for acceptance. Whatever strictness may be required with respect to common bills of exchange payable after sight, it does not seem unreasonable to treat bills of this nature, drawn by bankers on their correspondents, as not requiring immediate presentment; but as being retainable by the holders for the purpose of using them within a moderate time (for indefinite delay, of course, cannot

be allowed) as part of the circulating medium of the country, and the conduct of the defendants themselves furnishes some evidence that they are in point of fact so considered. If this be so, the delay in the present case does not seem unreasonable; this however, is for the jury to consider." The jury found for the plaintiffs. *Shute v. Robins*, 1 *M. & M.* 133.

In several of the cases above cited it will be seen, that the question of the reasonableness of the time, was considered to be a question of fact for the jury; *Muilman v. D'Eguino*, 2 *H. Bl.* 565; *Fry v. Hill*, 7 *Taunt.* 399; and so it has been laid down in other cases. *Hill v. Lewis*, 1 *Salk.* 132. *Manwaring v. Harrison*, 1 *Str.* 508. *Hankey v. Trotman*, 1 *W. Bl.* 1. *Hilton v. Shepherd*, 6 *East*, 14 (*n.*) *Hopes v. Alder*, *Id.* But in some cases, the question seems to have been considered as a question of law. *Appleton v. Sweetapple*, *M.* 23 *G.* 3. *Bayley*, 192. *Per Ashhurst J. Tindal v. Brown*, 1 *T. R.* 169. *Parker v. Gordon*, 7 *East*, 386. *Robson v. Bennett*, 2 *Taunt.* 394. In other cases again, it has been said to be a mixed question of law and fact. What is reasonable notice, says Lord Mansfield, is partly a question of fact and partly of law. It may depend in some measure on facts, such as the distance at which the parties live from each other, the course of the posts, &c. But, whenever a rule can be laid down, with respect to this reasonableness, that should be decided by the court, and adhered to by every one for the sake of certainty. *Per Lord Mansfield, Tindal v. Brown*, 1 *T. R.* 168. *See also Darbishire v. Parker*, 6 *East*, 3. So in *Bateman v. Joseph*, 12 *East*, 434, it was said by the court, that whether due notice had been given of the dishonor of a bill, *all the circumstances necessary for the giving of such notice being known*, was a question of law; but whether the holder has used due diligence to discover the place of residence of the person to whom notice is to be given, is a question of fact for the jury. In a late case the question of reasonable time was held to be properly left to the jury, where it depended upon a variety of circumstances. *Facey v. Hurdom*, 3 *B. & C.* 216. And in *Shute v. Robins*, 1 *M. & M.* 133, *ante*, *p.* 144, Lord Tenterden treated it as a mixed question of law and fact. *See also Bell v. Wardell*, *Willes*, 206.

The bill must be presented within the usual hours of business. *Parker v. Gordon*, 7 *East*, 386; *and see post*, *Chap.* IX.

How long the bill should be left with the drawee for acceptance.]—It is said that when a bill is presented for acceptance, *ex rigore*, the drawee ought immediately to accept or refuse, for he is not allowed three days for deliberation by the custom of merchants. *Com. Dig. Merchant*, (*F.* 6.), *citing Mar.* 15. Yet twenty-four hours upon demand shall be allowed for consideration, and a longer time is usually allowed where neces-

sity does not prevent. *Ib.* Where a bill was presented for acceptance on the 18th, and the holder's clerk called on the 20th, when the drawee desired it might be left another day, and on the 21st it was returned unaccepted, upon its being contended, that there ought to have been notice of the delay, in the acceptance or non-acceptance on the 19th of April, Lord Ellenborough observed, that the law of merchants, at Hamburgh, and which prevails all over the continent of Europe, is, that when a bill is kept more than twenty-four hours after acceptance, it amounts to an acceptance, and he should wish this point to be settled, and that it should be inquired, whether when bills are left for acceptance, there is not a specific time when they should be returned, and whether if the holder allows further time, he should not inform his indorser, and put him in as good a situation as himself. *Ingram v. Foster*, 2 *Smith*, 242, *and see post*, *Chap.* VIII., as to the effect of leaving a bill with the drawee. (*Note* 28.)

To whom presentment for acceptance should be made.]—Presentment for acceptance must be made to the drawee, or to some agent authorised by him. In an action against the drawer, on the refusal of the drawee to accept, it appeared that the witness had carried the bill to a place, which was described to him as the drawee's house, and that he offered it to a person in a tan-yard, who refused to accept it. The witness did not know the drawee's person, nor could he swear that the person to whom he offered the bill was he, or represented himself to be so. Lord Ellenborough held, that this evidence did not amount to proof of a demand upon the drawee. *Cheek v. Roper*, 5 *Esp.* 175. If a bill or note is made payable at a particular house, that house is the proper place at which to make the presentment, whether such house be mentioned in the body of the bill or not, or in the margin only, or in the acceptance only. *Bayley*, 174. (*Note* 29.) The cases with regard to the presentment of bills for payment, where the party is dead, or has absconded, or cannot be found, apply also to presentment for acceptance. *See post*, 147.

Presentment for payment.]—The person to whom, and the time and place at which presentment of a bill, note, or check, for payment should be made, will now be stated. In presenting a bill, or note, for payment, it ought not to be left; or if it be, the presentment is not considered as made until the money is called for. *Hayward v. Bank of England*, 1 *Str.* 550. *Bayley*, 186.

By whom.]—A bill must be presented for payment by the party entitled to receive payment upon it, or by his agent. If the holder be dead, and the executor has not yet proved the will, it is said by *Marius* (*in Malyne*, 32.), that the bill must

nevertheless be presented for payment at the regular time, but according to *Molloy, pl.* 34., no protest in such case ought to be made; and it would seem, that the drawer and indorsers would not be discharged, provided presentment be made, and notice be given of the dishonour, by the executor or administrator, in a reasonable time.

To whom.] Presentment for payment must be made to the drawee or acceptor of a bill, or to the maker of a promissory note. If the acceptor or maker has absconded, or is not to be found after due inquiry, the bill or note is to be considered as dishonoured, of which notice must be given. Thus it is said, the custom of merchants is, that if B., upon whom a bill of exchange is drawn, absconds before the day of payment, the man to whom it is payable may protest it, to have better security for the payment, and to give notice to the drawer of the absconding of B. 1 *Lord Raym.* 743. It must appear that due diligence has been used to discover the party, which is a question of fact for the jury. *Bateman v. Joseph*, 12 *East*, 434, *ante, p.* 145. Thus where the maker of a note shut up his house and went away the month before it became due, in an action against the indorser, Lee C. J. ruled that the plaintiff had not gone far enough, not having shewn that he had inquired after the maker, or attempted to find him out. *Collins v. Butler*, 2 *Str.* 1087. Where a note was made payable at Guilford, and the holder presented it when due, at two banking houses at Guilford, the maker then living in London, Abbott J. was of opinion, that a presentment at Guilford was a presentment to the maker himself. *Hardy v. Woodroofe*, 2 *Stark.* 319. *See more as to using due diligence to discover the residence of a party, post, Chap.* IX.

Where the drawee, acceptor, or maker is dead, the bill or note must be presented to his executors or administrators. *Molloy, b.* 2. *c.* x. *s.* 34. Unless where the bill is made payable and is presented at a particular place, in which case, it is not necessary to present it also at the house of the executor. *Philpott v. Bryant*, 3 *C.* & *P.* 244. In case there be no representative, the holder should demand payment at the house of the deceased. *Poth. pl.* 146. *Mar.* 134.

Where a bill is accepted by an agent, and at the time when it becomes due, the principal is still absent, it must be presented for payment to the agent. *Philips v. Astling*, 2 *Taunt.* 206.

Where—of a bill accepted generally.] A bill accepted generally may be presented to the drawee or acceptor wherever he can be found, for the holder is not bound to present it at any particular place; *see Turner v. Hayden*, 4 *B.* & *C.* 3; and in order to charge the acceptor, no presentment whatever is neces-

sary, though a demand is usual and ought to be made, before proceedings are instituted, as the suing a solvent acceptor without such a demand, might make a difference in the costs, on a prompt application to the court. *Macintosh v. Haydon*, *R. & M.* 363. If the acceptor cannot be personally met with, and the holder intends to charge the drawer or indorser, he must present the bill at the counting-house, or dwelling-house of the acceptor; *Saunderson v. Judge*, 2 *H. Bl.* 511; or usual place of abode. *Fenton v. Goundry*, 13 *East*, 465. Thus where it was necessary to prove a demand upon the acceptor, and a witness stated that he carried the bill to a house described as the house where the acceptor was described to live, but that there were no orders left; and the witness never saw the acceptor, Lord Ellenborough told the jury, that if a bill was payable at a certain house, it was sufficient to demand the money there, and that that had been done here, for it was the duty of the drawer of a bill to leave provision for the payment of it. *Brown v. M'Dermott*, 5 *Esp.* 265. *See Cromwell v. Hynson*, 2 *Esp.* 511. *post*, *Chap.* VIII. But where to prove a presentment to one Hammond, the drawee of a bill, a witness was called, who stated that he carried the bill to the place which was described to him as Hammond's house, and that he offered it to some person in a tan-yard, who refused to accept it; but that he did not know Hammond's person, nor could he swear that the person to whom he offered the bill was he, or represented himself so to be, Lord Ellenborough ruled that this evidence was insufficient. *Cheek v. Roper*, 5 *Esp.* 175. A neglect to present a bill will not discharge the acceptor. *Ante*, *p.* 90.

Where—of a bill accepted, payable at a banker's, or other place only, and not otherwise or elsewhere.] Where a bill is accepted, payable at a banker's house, or other place only, and not otherwise or elsewhere, according to the provisions of stat. 1 and 2 G. 4. c. 78. such acceptance is declared to be a qualified acceptance, and the acceptor shall not be liable to pay the said bill, except in default of payment, when such payment shall have been first duly demanded at such banker's house, or other place. Therefore, whether the holder intend to charge the acceptor himself, or some other party to the bill, a presentment at the banker's house, or other place, is necessary. Thus, before the passing of the above statute, when it was, after many conflicting decisions, ultimately decided in the House of Lords, that a bill accepted, payable at a banker's, was a special acceptance, it was also held, that in an action against the acceptor, presentment of the bill at the banker's must be averred and proved. *Rowe v. Young*, 2 *B. & B.* 165. *See post*, *Chap.* VIII. So also in another case, which occurred before the above statute, the Court of Common Pleas held, that a bill accepted, payable "at Messrs. T. & Co. No. 6,

Church Street," was a qualified acceptance, and that the declaration, in an action against the drawer, not containing an averment of presentment at the special place, was bad. *Ambrose v. Hopwood*, 2 *Taunt.* 61.

When a bill was specially accepted, payable at a banker's, it was ruled by Lord Ellenborough, that a presentment to the banker's clerks, in the *clearing house*, was a presentment at the banker's within the meaning of the acceptance. *Reynolds v. Chettle*, 2 *Campb.* 596. *And see Robson v. Bennett*, 2 *Taunt.* 396.

Where—of a bill accepted, payable at a banker's, &c. since stat. 1 *and* 2 *Geo.* 4. *c.* 78. *not saying, "there only, and not otherwise or elsewhere."*] Since the passing of the statute 1 and 2 Geo. 4. c. 78. a bill accepted, payable at a banker's, or other place, but omitting to state there *only*, and *not otherwise or elsewhere*, is a general acceptance. The holder, therefore, is not bound to present the bill at the place mentioned in the acceptance; *Turner v. Hayden*, 4 *B.* & *C.* 1.; but the mention of that place in the acceptance, is to be regarded as a memorandum, by the acceptor, that the bill *may* be presented to him there, and a presentment and refusal there would be sufficient to charge the drawer and indorsers. *Macintosh v. Haydon*, *R.* & *M.* 363. *Stedman v. Gooch*, 1 *Esp.* 4. The result of the statute 1 and 2 Geo. 4. is, that though the bill be, by the acceptance, made payable at a particular place, still the acceptance is to be esteemed a general obligation, and the acceptor may be called on elsewhere, as well as at the place indicated. But, though the legislature has provided, that the acceptor *may* be called on elsewhere, it has not made it *compulsory* on the holder to go elsewhere. *Per Best, C. J. De Bergareche v. Pillin*, 3 *Bingh.* 477. The acceptor will not be discharged, in case the holder neglects to present such a bill at the bankers', and they afterwards fail with money of the acceptor in their hands. *Turner v. Hayden*, 4 *B.* & *C.* 1. *ante*, *p.* 91.

Where—of a bill drawn payable in London, &c. and accepted (since stat. 1 & 2 *Geo.* 4. *c.* 78.*) payable at a banker's, or other place, not saying, "there only, and not otherwise or elsewhere."*] Where a bill is drawn, since the passing of the statute 1 & 2 Geo. 4. c. 88, payable in London, &c. and accepted by the drawee, payable at a banker's, or other place, in London, but not there only, and not otherwise or elsewhere, the acceptance has been held to be a general acceptance. *Selby v. Eden*, 3 *Bingh.* 611. *Fayle v. Bird*, 6 *B.* & *C.* 531. *post*, *Chap.* VIII. Such a bill, therefore, need not be presented at the place mentioned in the acceptance, though it *may* be presented there, and a refusal there would be sufficient to charge the drawer or indorsers. *See the cases cited in the last paragraph.*

Where—of notes payable at a particular place in the margin.] Where the place at which a note is to be payable is written in the margin of the note, such memorandum is no part of the contract, and it is not necessary to present the note for payment at that place, though, if so presented and dishonoured, the indorsers of the note will be liable. A note, with a memorandum at the foot, by which it was made payable at the house of Saunderson & Co. came by indorsement into the hands of Saunderson & Co. who sued the indorser, and at the trial were nonsuited, on the ground, that they had made no actual demand upon the maker; but the court of C. P. granted a new trial, considering such a demand unnecessary. *Per Cur.* "It was no part of the contract in this case, that the note should be paid at the house of Saunderson & Co., and, therefore, that was not necessary to be stated in the declaration. But the maker merely appointed the house of his banker as the place where he was to be called upon for payment, and where it would be paid. Yet, this was both an undertaking, that there should be cash there, and, also, an order to the bankers to pay it. It is not necessary that a demand should be personal; it is sufficient if it be made at the house of the holder of the note; and it is the same thing in effect, if it be made at the place where he appoints it to be made. If Judge (the indorser) had been the holder of the note, it would have been enough for him to have presented it at the house of Saunderson & Co.; and as they at whose house it was to be paid, were themselves the holders of it, it was a sufficient demand for them to turn to their books, and see the maker's account with them, and a sufficient refusal to find that he had no effects in their hands." *Saunderson v. Judge*, 2 *H. Bl.* 509. So, where a promissory note was made payable (in a memorandum at the foot of it, *see* 14 *East*, 501.) at a particular place, Bayley, J. ruled, that in an action against the maker, there was no necessity to prove, that it was presented there for payment. *Wild v. Rennards*, 1 *Campb.* 425. (*n.*) So, in an action against the maker of a note, payable, by a memorandum at the foot, at Vere & Co.'s it was contended, that it was necessary to shew a presentment at Vere & Co.'s; but, per Gibbs, C. J. "I am of opinion, that the words at the foot of this promissory note, are only a memorandum where payment may be demanded. Had they been inserted in the body of the note, they certainly would have formed a part of the contract, and evidence of a presentment at Vere & Co.'s would have been necessary to charge the defendant." *Price v. Mitchell*, 4 *Campb.* 200. So, in action against the maker of a note, in the margin of which, under the name of the maker, was written, "payable at Bruce & Co.'s," Gibbs, C. J. ruled, that this was a mere memorandum, not coupled with, or qualifying, the promise, and that a presentment of the note at Bruce & Co.'s need not be proved. *Richards v. Lord Milsington, Holt*, 364. (*n.*)

So, also, where in an action against the maker of a note, made payable, in the margin, at Brown & Co.'s, the plaintiff, in his declaration, stated that the defendant promised to pay, &c. "and made the same payable, and to be paid, according to the tenor and effect, at the house of certain persons, &c." it was held, that this was a variance, and that the plaintiff ought to have been nonsuited, for that the marginal address was not part of the contract, but a memorandum. *Exon v. Russell*, 4 *M. & S.* 505. *but see Hardy v. Woodroofe*, 2 *Stark.* 319. *post.*

But where the memorandum at the bottom of the note was *printed*, Lord Ellenborough held, that it was necessary to prove a special presentment, since the stipulation for payment, at a particular place, being printed, was to be considered as part of the note, having been made at the same time. *Trecothick v. Edwin*, 1 *Stark.* 468. And where, in an action against the maker of a note, which contained at the bottom the words, "payable at 32, Castle Street, Holborn;" the declaration averred, that the defendant promised to pay, &c. and that "he then and there made the same promissory note payable at 32, Castle Street, Holborn;" on its being objected, on the authority of *Exon v. Russell*, *see ante*, that this was a variance, it was answered, that the declaration did not describe the place of payment as part of the note itself, as was done in that case, but merely alleged that the note was payable at the particular place, and not that it was so payable according to the tenor and effect of the note; and Abbott, J. was of opinion, that the allegation, that the defendant had made the note payable at the particular place, was proved by the words themselves, in the defendant's handwriting. *Hardy v. Woodroofe*, 2 *Stark.* 319. It appears that the defendant in the above case afterwards moved for a new trial, or in arrest of judgment, on the ground that the note given in evidence varied from the special statement of it in the declaration, and that that statement importing a special place of payment, the count was bad, for want of an averment of presentment. But the court held, that the declaration did not import any special or limited promise to pay at a particular place, and that this case was distinguishable from that of *Exon v. Russell*. *See Chitty*, 326. *5th ed.* 155. *7th ed. nomine Parnell v. Woodroofe, and see Sproule v. Legge*, 3 *Stark.* 156. *S. P.*

Where—of notes payable at a particular place in the body of the note.] Where a note is made payable in the body of it, at a particular place, as "I promise to pay at Messrs. A. & Co.'s" &c. such special place of payment is part of the contract, and the note must be presented at that place, either to charge the maker of the note, or the indorser. Thus, in an action against the makers of a note, the declaration stated that the defendants "promised to pay on demand at the banking-house at Workington," &c. but there was no averment of the present-

ment of the note there; on demurrer, the court of K. B. held the declaration bad. Per Grose, J. "This is a promise to pay at the defendants' banking-house at Workington, but the defendants could not pay the note there, if the holder did not apply there for payment, and therefore the non-payment of it was the fault of the holder himself. The defendants only made a special engagement to pay their note at the banking-house, and they did not engage to pay it elsewhere. A request then was necessary to be made at their banking-house, to give a cause of action, and there being no averment in the declaration, that a request was made there, the action will not lie." *Saunderson v. Bowes*, 14 *East*, 508.

A similar question arose, in the case of *Dickenson v. Bowes*, 16 *East*, 110, when Lord Ellenborough said, that it had been already decided upon demurrer, *(see the last case)* that if the particular place of payment be embodied in the note, it was part of the condition on which it was made payable, that it should be presented for payment at that place. *See also Howe v. Bowes*, 16 *East*, 112. 5 *Taunt.* 30. *S. C.* So also where, in an action against the indorser of a note, made payable in the body of it at a particular place, the declaration omitted to state that it was so made payable, Lord Ellenborough held the variance fatal. "The declaration," said his Lordship, "represents the promissory note as containing an absolute and unqualified promise to pay the money. But by the instrument produced, the maker only promises to pay upon the specific condition, that payment is demanded at a particular place. We have lately held, that where the place of payment is mentioned in the body of the note, it forms a material part of the instrument." *Roche v. Campbell*, 3 *Campb.* 247. *See also Price v. Mitchell*, 4 *Campb.* 200. These decisions overrule that of Lord Ellenborough in *Nicholls v. Bowes*, 2 *Campb.* 498, where his Lordship ruled, that a note, made payable at a special place in the body of it, need not be presented there, in order to charge the maker.

Where — of notes payable at two different places.] Where a note is made payable at two different places, it may be presented at either. Thus, where a banker's note, payable at Maidstone and London, was presented at London on the 6th of March, but the house at which it was payable had stopped on that day, and it was dishonored, but had it been presented at the Maidstone house it would have been paid, that house not stopping till the 7th, Gibbs, C. J. held, that the holder had not been guilty of laches. *Beeching v. Gower*, *Holt*, 313.

When — of bills payable after date.] Although in general a *month* in construction of law means a *lunar* month, *Lacon v. Hooper*, 6 *T. R.* 224. *Lang v. Gale*, 1 *M. & S.* 117, yet in the computation of time upon bills and notes it means a calen-

dar month. Thus where a bill is dated the 7th January, and payable a month after date, that month expires on the 7th February, *Beawes, pl.* 253, to which must be added the three days' grace, so that the bill becomes payable on the 10th February, and the money may be demanded from the acceptor of a bill or the maker of a note, at any time on that day within reasonable hours. *Leftly v. Mills*, 4 *T. R.* 170. *Bayley*, 200. *see post, Chap.* IX. A presentment on the second day of grace, where the third is not a Sunday, &c. (*vide post*), is a nullity. *Wiffen v. Roberts*, 1 *Esp.* 261. Where the time is computed by days, the day on which the event happens is to be excluded. Thus on a bill or note payable ten days after date, dated the 1st January, the time does not expire till 11th. *Bellasis v. Hester*, 1 *Lord Raym.* 280. *Bayley*, 202, *but see May v. Cooper, Fort.* 376. Where one month is longer than the succeeding one, it is a rule not to go, in the computation, into a third. Thus on a bill dated the 28th, 29th, 30th, or 31st of January, and payable one month after date, the time expires on the 28th of February, in common years, and in the three latter cases, in leap year, on the 29th. *Kyd*, 6. 3*d ed. Mar.* 75.

Where a man takes a bill immediately before it becomes due, payable at a distant place, he is bound to use reasonable and due diligence in presenting it. Thus where the buyer of goods delivered to the seller in Yorkshire, on the 26th December, a bill payable in London, due on the 28th, and the latter forwarded it to his banker's at Lincoln on the 29th, who forwarded it to London, on the 2d January, when it was presented, but the bankers at whose house it was payable had stopped the day before, it was held that the seller had made this bill his own by laches. *Per Lord Ellenborough*, "The party who agreed to take the bill so near the time of its becoming due as to make it necessary to present it without delay, might have renounced it if he did not choose to undertake that duty, but if he keeps it he is bound to use reasonable and due diligence in presenting it. Here he has not so done. He was bound to send the bill off sooner, he might have sent it on Friday, but by delaying till Sunday, he deprived the defendants, who were parties to the bill, of the chance of its being presented one day sooner." *Anderton v. Beck*, 16 *East*, 248.

It is said by *Beawes, pl.* 251. *Com. Dig. Merch.* (*F.* 7.) that a bill payable *at a certain date* is due on the day mentioned, according to the style of the place it is drawn *on*, not where it is drawn from. If by this is meant not a bill payable a certain number of days after date, but on a day certain, it may be reconciled with the authority of *Marius*, 89, 90, who states that where a bill is payable a certain time *after date*, the time is reckoned according to the style of the place where it is drawn, but in other cases according to the style of the place where it is payable. *Bayley*, 201. *Kyd*, 8. 3*d ed.* (*see Note*, 30.)

Where a bill or note is drawn payable at a certain time, as two months after date, and no date is expressed, it will be intended to be payable two months after the drawing. *Hague v. French*, 3 *Bos. & Pul.* 173. *ante*, p. 24.

When — of bills payable after sight.] The time within which a bill payable at a certain time after sight must be presented for *acceptance*, has been already stated, *see ante*, p. 142. The time of presentment for payment must be computed (where acceptance is refused) from the presentment for acceptance. *Beawes, pl.* 252. *Bayley*, 201. (*Note* 31.) It is said in *Marius*, 19*th ed.* 1656, that "a bill payable at so many days' sight is to be accounted so many days next after the bill shall be *accepted* or else protested for non-acceptance, and not from the date of the bill, nor from the day when the same came to hand, or was privately exhibited to the party, on whom it was drawn, to be accepted, if he do not accept thereof; for the sight must appear in a legal way, which is approved either by the parties underwriting the bill accepting thereof, or by protest made for non-acceptance;" and this doctrine is recognised by Lord Kenyon, in *Campbell v. French*, 6 *T. R.* 212. Where a bill payable thirty days after sight was presented on the 12th July, to the drawees for acceptance, and refused, and was thereupon protested, and on the 20th of the same month a third person accepted it for the honor of the drawer, and on the 22d August it was presented for payment to the drawees and to the acceptor for honor, it was held that this presentment having been made at the time when the bill became due according to the acceptance for honor was sufficient, and that it was not necessary to present it to the drawees on the 14th August, computing the time from the presentment for acceptance. *Williams v. Germaine*, 7 *B. & C.* 468. 1 *M. & R.* 394. *S. C.* In computing the time upon a bill payable at a certain number of days after sight, the day of presentment is to be excluded. *Coleman v. Sayer, Barnard.* 303. *Lester v. Garland*, 15 *Ves.* 254. *Poth. pl.* 13. *Bayley*, 202. *sed vide Bellasis v. Hester*, 1 *Lord Raym.* 280.

When — of bills and notes payable on demand.] A bill or note payable on demand is payable immediately on presentment, and unless put into circulation must be presented within a reasonable time after the receipt. *Bayley*, 187. The holder is not bound *immediately* to circulate such a bill or note, or to present it for payment, but he is bound within a reasonable time after receiving it either to circulate it or present it for payment. *See Camidge v. Allenby*, 6 *B. & C.* 382. Where the instrument is not negotiable, he is bound to present it within a reasonable time. *Chamberlyn v. Delarive*, 2 *Wils.* 353. It seems that what is a reasonable time is a mixed question of law and fact. *See ante*, p. 145.

The following cases have been decided on this subject. A banker's note was paid to the servant of the plaintiff, who presented it next morning. On a case reserved the court of K. B. were of opinion that this presentment was in time. *Per Powell, J.* "The money ought to be demanded in convenient time, for if the party keep the note by him without demanding it he must run the hazard of it, but here it was demanded in due time." *Ward v. Evans*, 2 *Ld. Raym.* 928. So where the defendant at two o'clock in the afternoon gave the plaintiffs goldsmiths' notes in payment, which were tendered the next morning at nine, when the goldsmiths had quarter of an hour before stopped payment; the chief justice directed the jury that the loss should fall on the defendant, there being no laches in the plaintiffs, who had demanded their money as soon as was usual in the course of dealing, and that the keeping of the notes till the next morning could not be construed to be a giving new credit to the goldsmiths, and the jury found accordingly. *Moore v. Warren*, 1 *Str.* 415. *Holme v. Barry*, *Ib. S. P.* The defendant paid the plaintiffs, the Sword Blade Company, two goldsmiths' notes at three in the afternoon; the plaintiffs' servant next morning left the notes with the goldsmiths, intending to call in the evening, as was the practice between the parties. The servant called again in the evening, when the goldsmiths had stopped payment. But because the plaintiffs had done nothing more than was usual in leaving the notes in the morning, without taking the money, the Chief Justice directed the jury to find for them, which they did. *Turner v. Mead*, 1 *Str.* 416. On Saturday afternoon, J. S. received a bankers' note, and on Tuesday morning just after the bankers had stopped payment presented it, Pratt, C. J. told the jury that giving the note is not immediate payment, unless the receiver does something to make it so, by neglecting to receive it in a reasonable time, by which he gives credit to the maker of the note. He left to them whether there had been any neglect, upon which the jury desired that they may find it specially, and leave it to the court whether there was a reasonable time; but the Chief Justice told them they were judges of that, whereupon they found for the defendant, and declared it as their opinion that a person who did not demand a goldsmiths' note in *two* days took the credit on himself. *Manwaring v. Harrison*, 1 *Str.* 508. Woodward's note was paid to the plaintiff (a banker), at twelve on Friday, who put it into the bank at one, and the next morning at ten the runner of the bank carried it to the shop (Woodward's), with other notes, and left them (as usual), to call again for the money: he called again at eleven, and they said their servant was gone to the bank. He called again at two, and they said they were going to shut up, and refused to pay. It was insisted for the defendant that he should not suffer by the plaintiff's paying it into the bank, who sent it with other notes; whereas, if the note had been tendered by itself

it would have been paid. *E contra*, it was insisted that if there had been no demand there would have been no laches, being within a day after the receipt that the goldsmith stopped payment. Raymond, C. J. said that there was no standing rule, but left it to the jury, who found for the plaintiff. *Hoar v. Da Costa*, 2 *Str.* 910. At half-past eleven in the morning the defendants paid the plaintiffs a goldsmiths' note, and the goldsmiths stopped payment at two o'clock the next day, immediately after which the plaintiffs' servant came with the note. After examining merchants, it was held that the plaintiffs had made it their own by not sending it out the afternoon of the day they received it, or at furthest the next morning. *East India Co. v. Chitty*, 2 *Str.* 1175. A banker's note for 500*l.* was paid to the plaintiff after dinner, who sent it the next morning at nine, when the banker had stopped payment; and it was ruled that there was no laches in the plaintiff, and that in all these cases there must be a reasonable time allowed, consistent with the nature of circulating paper credit. *Fletcher v. Sandys*, 2 *Str.* 1248. The defendant gave the plaintiff a bill upon a banker, at twelve at noon, and the banker stopping payment before the next morning, the question was whether the plaintiff or defendant should stand to the loss, and whether there was any laches in the plaintiff, who got the bill marked for acceptance the same night. After verdict for the defendant, the court refused to grant a new trial, considering it a question of fact, of which the jury were the proper judges. *Hankey v. Trotman*, 1 *W. Bl.* 1. *but see Robson v. Bennett*, 2 *Taunt.* 394. A bill payable in London on demand, was given to the plaintiff in London, at one o'clock in the afternoon, and he did not present it till the next morning; the question was whether he presented it in time. Lord Mansfield left the point to the jury, who found for the defendant; but the court granted a new trial, on the ground that the question was a matter of law upon which the judge should decide; the jury found again for the defendant, but against the judge's direction. A second new trial was granted, and the jury found again for the defendant, and then the court refused to interfere. *Appleton v. Sweetapple*, *B. R. M.* 23 *Geo.* 3. *Bayley*, 192. *Chitty*, 348. 5*th Ed.* 1 *Esp. Dig.* 69. 4*th Ed. S. C.* The plaintiffs, bankers at Aylesbury, at noon, on the 13th June, received a check, dated the 11th, on Smith, Payne and Co., bankers, London. The post leaves Aylesbury in the evening. The plaintiffs did not send off the check by the post of the 13th, but by a coach which started at eight o'clock on the morning of the 14th. It was received by Praed and Co., the plaintiffs' town agents, between three and four on that afternoon, and by them presented about eleven on the forenoon of the 15th, and dishonored. Lord Ellenborough thought the presentment sufficient. He said the rule that the moment a check is received by the post, it should invariably be sent out for payment, would be most inconvenient

and unreasonable. That the rule to be adopted must be a rule of convenience, and that it seemed to be convenient and reasonable, that checks received in the course of one day should be presented the next. *Rickford v. Ridge*, 2 *Campb.* 537. On the 11th September, the defendants delivered to the plaintiffs, in discharge of a debt for goods sold, a check on Messrs. Bloxam, bankers, London, and on the same day, the plaintiffs, a little after four in the afternoon, lodged this check with Harrisons, their bankers, for payment. It is customary amongst the London bankers, not to pay any check, presented by another banker, after four o'clock, but if approved of, to mark it, which entitles it to priority of payment the next day. Harrisons presented the check between five and six o'clock on the afternoon of the 11th, when it was marked by Bloxams and returned. At twelve o'clock the next day, Harrisons sent the check to the clearing-house, but no one attended for Bloxams, who had stopped payment that morning at nine o'clock. The court held that there was no laches in presenting this check; that the marking was equivalent to an acceptance of the check, payable the next day at the clearing-house, and that a presentment of it at that place was equivalent to a presentment of it at the banking-house. *Robson v. Bennett*, 2 *Taunt.* 388. An action was brought for the amount of a check given by the defendants to the plaintiffs. The check, which was drawn on M. and Co., bankers, was paid to the plaintiffs, at eleven o'clock in the morning of the 16th of November, and not presented till near five o'clock on the 17th. The bankers stopped payment at four o'clock that day. Gibbs C. J. directed a verdict for the plaintiffs, on the ground that they had the whole of the banking hours of the next day to present the check. The jury, however, found for the defendants, upon which a new trial was granted, and Burrough J. directed a verdict for the plaintiffs, saying that whatever doubts had been formerly entertained, it was now established as a rule of law, that the party receiving a check on a bank, has the whole of the banking hours of the next day to present it for payment. *Pocklington v. Silvester, Sitt. after T. T.* 57 *Geo.* 3. *Chitty*, 351. *5th Ed.* 274. *7th Ed.* The defendant paid the plaintiffs a check for 20*l.*, drawn on the Maidstone bank on the 5th of April. It was given to the plaintiffs some time before the post set out on the 5th. The plaintiffs kept it all the 5th and 6th, but sent it to Maidstone by the carrier, on the morning of the 7th, and it reached Maidstone at nine o'clock, but the Maidstone bank did not open that morning. If it had been sent by the post of the 6th, it would have reached Maidstone an hour earlier. *Per Gibbs C. J.*—"The plaintiffs cannot recover; they have been guilty of laches. I will not say that it was not their duty to have sent their check off by the post of the 5th, but the extreme time up to which they were justified in keeping it was till the post of the 6th.

They did not send it till the 7th. It did not matter when the carrier arrived; they must suffer for their negligence." *Beeching v.* ———, *Holt*, 315. (*n.*) The defendant, on Friday, the 8th of December, about nine or ten in the morning, paid to the plaintiff, at Wantage, in Berkshire, 490*l.* in notes of the Old Newbury bank, payable on demand, at Newbury, and at Messrs. B. & D., in London. The plaintiff, instead of sending the notes to Newbury, cut them into halves, and transmitted one set of halves to London, to A. & Co., bankers there, to procure payment, by a banker's parcel on Saturday evening, and the remaining halves by post on Sunday. The halves sent by post, arrived in London between ten and eleven on Monday. The halves sent by parcel, a little later. They were presented for payment on Tuesday, and dishonored. The Newbury bank stopped on the morning of Monday, but Messrs. B. & D. continued to pay their notes the whole of Monday. It was held that the plaintiff had not been guilty of laches. *Per Abbott C. J.*—"It appears that if these notes had been transmitted direct to Newbury by the post, they would not have been paid; for they discontinued payment there on Monday morning; and though the circumstance of one set of halves being sent by the coach, caused their arrival in London two hours later, still that being a reasonable precaution, the plaintiff had a right to send them by that conveyance. There is a difference between this case and that of a bill of exchange payable to order, for such bill may be specially indorsed, and no risk incurred by sending it by the post. But here it would not have been so safe to have transmitted notes payable to bearer on demand by that conveyance. Then in addition to this, it appears that the defendant has not been in the least degree prejudiced by this mode of conveyance having been adopted." *Williams v. Smith*, 2 *B. & A.* 496. *See also Camidge v. Allenby*, 6 *B. & C.* 373; *ante*, *p.* 101, *and James v. Holditch*, 8 *D. & R.* 40. (*See Note* 32.)

It appears therefore to be now settled law, that a person who receives a check has the whole of the business hours of the day next after that on which he receives it, to present it for payment, and that if it is necessary to send it by post for payment, it is sufficient to send it by the post of the day next following that on which it is received. It appears also, that where such a check is delivered to the banker of the holder, for purpose of obtaining payment, the banker has the same time to present it as a fresh holder would have had, viz. the whole of the business hours of the day next after that on which he receives it.

When—on bills, &c. becoming due on Sunday, Christmas-day, Good Friday, or fast-day.] At common law, if the last of the three days of grace fell on a Sunday or great holiday, as Christmas-day, &c., the bill was payable on the second day. *Tassell*

v. Lewis, 1 *Ld. Raym.* 743. And now by stat. 39 & 40 Geo. 3. c. 42. s. 1. where bills of exchange and promissory notes become due and payable on Good Friday, the same shall from and after the 1st day of June, (1800), be payable on the day before Good Friday, and the holder or holders of such bills of exchange or promissory notes may note and protest the same for non payment, on the day preceding Good Friday, in like manner as if the same had fallen due and become payable on the day preceding Good Friday, and such noting and protests shall have the same effect and operation at law, as if such bills and promissory notes had fallen due and become payable on the day preceding Good Friday, in the same manner as is usual in cases of bills and notes coming due on the day before any Lord's day, commonly called Sunday, and before the feast of the nativity or birth day of our Lord, commonly called Christmas-day.

So with regard to *fast days*, it is enacted by 7 & 8 Geo. 4. c. 15. s. 2., that from and after the 10th day of April, 1827, in all cases where bills of exchange or promissory notes shall become due and payable on any day appointed by his Majesty's proclamation for a day of solemn fast or a day of thanksgiving, the same shall be payable on the day next preceding such day of fast or day of thanksgiving; and in case of non-payment, may be noted and protested on such preceding day, and that as well in such cases as in the cases of bills of exchange and promissory notes becoming due and payable on the day preceding any such day of fast or day of thanksgiving: and it shall not be necessary for the holder or holders of such bills of exchange and promissory notes, to give notice of the dishonor thereof until the day next after such day of fast or day of thanksgiving; and that whensoever such day of fast or day of thanksgiving shall be appointed on a Monday, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes as shall be payable on the preceding Saturday, to give notice of the dishonour thereof until the Tuesday next after such day of fast or day of thanksgiving respectively, and that every such notice, so given as aforesaid, shall be valid and effectual to all intents and purposes. And by section 3, it is enacted, That from and after the said 10th day of April, 1827, Good Friday and Christmas-day, and every such day of fast or thanksgiving, so appointed by his Majesty, is and shall for all other purposes whatever, as regards bills of exchange and promissory notes, be treated and considered as the Lord's-day, commonly called Sunday. By sec. 4. the act is not to extend to Scotland.

When—hours within which presentment must be made.] Presentment must be made at seasonable times, that is, within the usual hours of transacting business of that nature. Thus, where

a bill payable at a banker's was not presented till past 6 o'clock in the evening, it was held by Lord Ellenborough, and afterwards by the court of K. B. that the presentment was insufficient to charge the drawer. *Per Lawrence J.* "If this were a sufficient demand for payment, no person would be safe in lodging money at a banker's for the purpose of answering bills made payable there; for if the holder might apply for payment at any time of the day, by making his application at an unusual time, it would insure the dishonor of the bill. But where a bill is accepted in this manner, it must be understood by all parties concerned, that it is to be presented for payment at the banker's within the usual hours of business." *Parker v. Gordon*, 7 *East*, 385. 6 *Esp.* 41. 3 *Smith*, 358. *S. C.* So where a bill payable at a banker's was presented by a notary between half past six and seven o'clock in the evening, who finding the banking-house shut, went to the *private house door*, and there saw a female servant, who returned for answer *No orders*, (*see the next case*) the court of K. B. were of opinion that this presentment was not sufficient to charge the drawer. Lord Ellenborough said "that the case of *Parker v. Gordon* was not distinguishable from the present, and that case was conformable with the doctrine which he had usually held. There was not any text-writer upon whose authority a presentment of a bill by a notary at a house of business after it was closed, could be sustained. It is laid down in *Marius* [2 *ed.* 187.] that it must be made during times of business, at such seasonable hours as a man is bound to attend, by analogy to the *horæ juridicæ* of the courts of justice." *Elford v. Teed*, 1 *M. & S.* 28. But where a bill was presented at a banker's between the hours of six and seven in the afternoon, when the clerks were gone, but a servant was stationed there, who on the bill being presented, returned for answer, that there were no orders, the court held the presentment sufficient. *Per Cur.* "Here though the presentment was out of banking hours, there was a person stationed for the purpose of returning an answer, and an answer was returned, the same as would have been if the presentment had been within the hours of business. The answer was not that the party came too late, but that there were no orders; the object of the presentment was therefore completed, after which it cannot be open to either party to aver that it was out of time." *Garnett v. Woodcock*, 6 *M. & S.* 44. 1 *Stark.* 475. *S. C.* *And see Henry v. Lee*, 2 *Chitty*, 125. But where a bill is payable at another place than a banker's, there are no particular hours within which it must be presented, provided it be not presented at an unseasonable hour. In an action against the drawer of a bill accepted by one David Hardy, it appeared that at eight in the evening of the day the bill became due, it was presented at the house mentioned on the face of it as the drawee's place of residence, when the answer

given by a person who came to the door was, *that Mr. Hardy had become bankrupt, and removed to another quarter of the town.* On the part of the defendant it was proved that he had a person stationed at this house, for the purpose of taking up the bill, from nine in the morning till four in the afternoon, but that no one presented it during that time. *Per Lord Ellenborough,* "I think this presentment sufficient. A common trader is different from bankers, and has not any peculiar hours for paying or receiving money. If the presentment had been during the hours of rest, it would have been altogether unavailing; but eight in the evening cannot be considered an unseasonable hour for demanding payment at the house of a private merchant who has accepted a bill." *Barclay v. Bailey,* 2 *Campb.* 527. *And see Bancroft v. Hall, Holt,* 477. *post, Triggs v. Newnham,* 10 *B. Moore,* 249. 1 *C. & P.* 631. *S. C.* So where a bill payable at H. & R.'s, Copthal-court, London, (not bankers) was presented on the day it became due, between six and seven o'clock in the evening, Lord Ellenborough held that this was a sufficient presentment; the hour was not an improper one, and the holder might reasonably expect to find the party in his counting-house at the time. *Morgan v. Davison,* 1 *Stark.* 114.

Days of grace—in general.] By the law-merchant of different nations, a certain time is allowed to the drawee or acceptor of a bill or the maker of a note, for payment, beyond the time limited for payment in the bill or note itself. These extra days, which were originally matter of favor, but have now become matter of right, *Poth. pl.* 187, are termed days of grace; and the number of the days thus allowed, varies in different countries. The following table contains the days of grace, as computed in the time of Beawes. *Beawes, pl.* 260. *Kyd,* 9. *Chitty,* 339.

	Days.
London, Bergamo, and Vienna	3
Frankfort, out of the fair time	4
Leipsic, Naumburg, and Augsburg	5
Venice, Amsterdam, Rotterdam, Middleburg, Antwerp, Cologn, Breslau, and Nuremburg	6
Naples, Denmark, and Norway	8
Dantzic, Koningsburg, and France	10
Hamburgh and Stockholm	12
Spain	14
Rome	15
Genoa	30

According to the Hamburgh ordinance, *Art.* 16. followed by Beawes, *pl.* 260. the days of grace at Hamburgh are twelve, but in the two following cases the rule is more fully stated.

A bill for 500*l.*, drawn on Katter at Hamburgh, at three usances, was dated the 25th June, 1799; it was presented for payment on the 4th of October, which was a post day. In an action by the indorsees against the payee, the defence was, that the presentment was improper; but it was proved in evidence as a settled usage at Hamburgh, that although it is usual to pay bills on the day they become due, the holder may, if he pleases, keep them a certain number of days, called respite days; and that the number of respite days is eleven, where the eleventh is a post day; but where the eleventh is not a post day, the respite days extend to the preceding post day only, the holder being obliged, at his peril, to protest, and send off the protest by the eleventh day. Verdict for the plaintiffs. *Goldsmith v. Shee, C. P. cor. Ld. Eldon,* 20 *Dec.* 1799. *Bayley,* 199. A bill for 998*l.* 9*s.* 9*d.* drawn on Treveramus, of Bremen, but payable in Hamburgh, at three months, was dated the 15th June, 1799; it was not presented or protested until the 26th Septr. which was not a post day; another bill for 261*l.* 7*s.* 2*d.* addressed to Voeg, in Lubeck, payable in Hamburgh at three months, was dated the 26th June, 1799; it was not presented or protested until the 7th of October, which was not a post day. In an action on these bills against the defendants as indorsers, it was proved that it was optional in the holder of a bill at Hamburgh, whether he would present and protest it on the post day before the eleventh day after the day limited for its payment, the eleventh not being a post day, or whether he would keep it until the eleventh; and one witness proved, that when the drawee lived at Lubeck or Bremen, it was the constant usage to keep the bill until the eleventh, whether it was post day or not, there being posts from Lubeck and Bremen to Hamburgh every day. *Goldsmith v. Bland, C. P. cor. Lord Eldon,* 1 *Mar.* 1800. *Bayley,* 199.

Sundays and other festivals are included in the days of grace at London, (unless the Sunday or festival should be the last day of the three, when the bill is payable on the second day, *vide ante, p.* 159.) Naples, Amsterdam, Rotterdam, Antwerp, Middleburg, Dantzic, Koningsburg, and in France, but not at Venice, Cologn, Breslau, and Nuremburg. At Hamburgh, the day on which the bill falls due makes one of the days of grace, but no where else. *Beawes, pl.* 260. *Kyd,* 9.

According to the latest commercial authority, *Freese's Cambist's Compendium,* the days of grace in different countries are computed as in the following table. *(See Note* 33.)

Amsterdam. Abolished since the introduction of the Code Napoleon.

Antwerp. Ditto.

Altona. 12 days, Sundays and holidays included; and bills

falling due on a Sunday or holiday must be paid, or in default thereof protested on the day previous.

Berlin. 3 days, when bills including them do not fall due on a Sunday or holiday, in which case they must be paid or protested the day previous.

Brazil. (Rio de Janeiro—Bahia). 15 days, including Sundays, &c., as in the last case.

France. Abolished by the Code Napoleon. *Liv.* 1. *tit.* 8. *sec.* 5. *pl.* 135.

Franckfort on the Maine. 4 days, except on bills drawn at sight. Sundays and holidays not included.

Genoa. Abolished by the Code Napoleon.

Hamburgh. Same as Altona.

Leghorn. None.

Lisbon and Oporto. 15 days on local and 6 on foreign bills; but if not accepted, must be paid the day they fall due.

Palermo. None.

Petersburgh. Bills drawn after date are entitled to ten days' grace, those drawn at sight to only 3 days, and those at any number of days after sight, none whatever. But bills received and presented after they are due, are nevertheless entitled to 10 days' grace. In these days of grace are included Sundays and holidays, as also the day when the bill falls due, on which days they cannot be protested for non-payment; but on the morning of the last day of grace payment must be demanded, and if not complied with, the bill must be protested before sunset.

Rotterdam. Abolished by the Code Napoleon.

Spain. Vary in different parts of Spain, generally 14 days on foreign and eight on inland bill—at Cadiz only 6 days' grace. When bills are drawn at a certain date, *fixo* or *preciso*, no days of grace are allowed. Bills drawn at sight are not entitled to any days of grace; nor are any bills, unless accepted prior to maturity.

Trieste. 3 days on bills drawn after date, or any term after sight, not less than 7 days, or payable on a particular day; but bills presented after maturity must be paid within 24 hours. Sundays and holidays are included in the days of grace; and if the last day of grace fall on such a day payment must be made, or the bill protested on the first following open day.

Venice. 6 days in which Sundays, holidays, and the days when the bank is shut, are not included.

Vienna. Same as Trieste.

Days of grace—upon what bills.] Days of grace are allowed upon inland as well as foreign bills, and upon promissory notes as well as upon bills. *Brown v. Harraden*, 4 *T. R.* 148. *B. N. P.* 274. They are allowed on bills payable a cer-

tain time after sight. *Coleman v. Sayer, Barnardiston, B. R.* 303. *Beawes, pl.* 256. *Leftley v. Mills,* 4 *T. R.* 170. It is said by *Beawes, pl.* 256. and by *Kyd,* 10, that bills payable here *at sight* have no days of grace allowed. So by the former law of France days of grace were not allowed on such bills. *Poth. pl.* 12. 172. 198. (*Note* 34.) and the same is now the law of Spain. *Cambist's Compendium,* 124. But there are several authorities to shew that days of grace are to be allowed on such bills here. Thus in *Dehers v. Harriot,* 1 *Show.* 164, it is said that all the merchants agreed, that if there were an acceptance, the protest must be at the day of payment; *if at sight,* then at the third day of grace. So in *Coleman v. Sayer, supra,* Raymond, C. J. said, that days of grace were allowed both where a bill is payable at certain days after sight, and where it is payable upon sight. So in *J'Anson v. Thomas, Bayley,* 79, Buller, J. mentioned a case before Willes, C. J., in which a jury of merchants was of opinion that the usual days of grace were to be allowed on bills payable at sight; and the law is so laid down by a writer of authority. *Bayley,* 198.

In the following case Lord Mansfield held, that by custom the days of grace upon a particular kind of bills might be extended to nine days. The action was by the commissioners of excise against the defendant, as drawer of a bill of exchange in their favor on one Wilson, and specifying in the bill that it was for king's money; when the bill became due, the clerk to to the commissioners carried it to Wilson for payment; but his clerk said he was gone out, and had left no orders about the bill, and that therefore they must take the *six days.* This was explained thus: that whenever a bill is drawn payable to the excise, they usually allow six days beyond the three days of grace, if required by the acceptor, on payment of one shilling to the clerk at the six days' end for his trouble; that this was never refused, and was well known to be the custom; and one witness swore, that he had heard the defendant mention it, but that he had always considered it as an indulgence rather than as a right: the note including the three days of grace, was payable the 24th; no notice was given to the defendant, the drawer, till the 30th, and on the 24th Wilson had absconded. The defendant refused to pay, on the ground that notice was not given him in due time. But *per Lord Mansfield,* "It is not in the power of any particular officer by particular indulgence in any case, to charge a drawer of a bill; but this is a general custom, and ingrafted on such bills, and being known universally, must bind the parties." *Wilford v. Hankin, Guildhall S. Hil.* 1763. *MSS.* 1 *Esp. Dig. N. P.* 71. *4th ed.*

Days of grace—at what time on the last day of grace a bill or note must be presented.] In this country, upon the last day of grace, and within a reasonable time before the expiration of that day, a bill or note must be presented for

payment. *Bayley*, 200. But if the holder, having presented it once, present it a second time, on the last day of grace, the acceptor or maker may tender the amount. *Leftly v. Mills*, 4 *T. R.* 170.

Usance.] Foreign bills are frequently drawn at *usance*. An *usance* signifies the usage of the country where the bill is drawn, according to which it is drawn at a longer or shorter date. Thus a bill drawn at Hamburgh on London at *usance*, is payable one month after date, such being the recognized usage at Hamburgh, with regard to bills on London. Bills are drawn at single, double, or treble usance, which signifies the usual time, double the usual time, or treble the usual time. *Molloy*, *b.* 2. *c.* 10. *s.* 10. A half-usance contains half the accustomed time, and when the usance is a month, half-usance is always fifteen days. *Mar.* 23. 2*d Ed.* *Bayley*, 203. It has been said, that according to the language of merchants, "usance" signifies a month. *Smart v. Dean*, 3 *Keb.* 645. But in another case the court said, that they could not take notice of foreign usances, which varied, being longer in one place than another. *Buckley v. Cambell*, 1 *Salk.* 131. *And see Meggadon v. Holt*, 12 *Mod.* 15.

The usances between London and various places abroad, are stated in the following table. (*Note* 35.)

Amsterdam,	1 month after date. *Beawes. Molloy. Camb. Comp.*
Antwerp,	Ditto *Ditto Ditto Ditto*
Brabant,	Ditto *Beawes*
Bilboa,	2 months after date. *Bayley. Camb. Comp.*
Berlin,	14 days after acceptance. *Camb. Comp.*
Cadiz,	2 months after date. *Bayley. Camb. Comp.*
Flanders,	1 month after date. *Molloy. Beawes.*
Frankfort on the Main,	14 days after acceptance. *Camb. Comp. Beawes.*
France,	1 month of 30 days after date. *Beawes.* One month; *Bayley. Molloy;* but in the *Camb. Comp.* 98, the usance between Paris and England is said to be 60 days after date. Pothier says, "Ce temps est reglé par l'ordonnance de 1675. *tit.* 5. *art.* 5. à trente jours, soit que le mois de la date de la lettre de change ait plus ou moins de jours." *pl.* 15. According to Pardessus, *Cours de Droit Commercial*, vol. ii. p. 356, "Les usances sont en France une serie de trente jours qui se complent sans avoir regard à la plus ou moins grande duree du mois dans lequel elles se trouvent; de maniere qu'une lettre à trois usances datee du 3 Janvier, sera echue le 4 Avril dans les annees bissextiles; une lettre, a deux-usances du 29 Juin sera echue le 28 Août."
Florence,	Sometimes accounted treble usance. *Molloy.*

Genoa, 2 months after date. *Molloy.* 3 months. *Beawes. Bayley. Chitty.*
Geneva, 1 month after date. *Beawes.*
Hamburgh, 1 month after date. *Beawes. Camb. Comb.*
Holland, 1 month after date. *Beawes. Camb. Comp.*
Leghorn, 3 months after date. *Beawes. Molloy. Camb. Comp.*
Lisbon, 2 months after date. *Molloy. Beawes.* In *Camb. Comp.* said to be 15 days after sight.
Lucca, Sometimes 3 months after date. *Molloy.*
Madrid, 2 months after date. *Molloy. Beawes. Camb. Comp.* 1 *Wils.* 185.
Middleburgh, 1 month after date. *Molloy. Beawes.*
Milan, 3 months. *Beawes.*
Rotterdam, 1 month after date. *Molloy. Camb. Comp.*
Palermo, 3 months or 90 days after date. *Camb. Comp.*
Petersburgh, None. *Camb. Comp.*
Rome, 3 months after date. *Beawes.*
Venice, 3 months after date. *Molloy. Beawes. Camb. Comp.*
Trieste, See Vienna. *Camb. Comp.*
Vienna, 14 days after acceptance. *Camb. Comp.* 14 days after sight. *Beawes.*
Zante, 3 months after date. *Molloy.*
Zealand, 1 month after date. *Beawes.*

Excused—when, in general.] The bankruptcy or insolvency of the drawee or acceptor of a bill, or the maker of a note, is no excuse for not presenting it. *Esdaile v. Sowerby*, 11 *East*, 117. *Russell v. Langstaffe, Dougl.* 497. 515. 4*th ed.* In an action against the makers of a promissory note made payable in the body of it at a particular place, (Workington bank,) the declaration instead of stating a presentment at that place, averred that the defendants *became insolvent, and until the commencement of the action, ceased and wholly declined and refused to pay* at the particular place. In support of this averment, the plaintiff proved that the bank was shut up, and that no payments had been made there for some time before the action brought, upon which the plaintiff had a verdict, and the court of K. B. refused a new trial. Lord Ellenborough observed, that the mere allegation of insolvency, as an excuse for not presenting the notes for payment at the place, would be impertinent; but in this case the allegation (the truth of which was left to the jury and found by them), went further, that the defendants had ceased and wholly declined and refused payment of any of their notes at the place. How then could the question arise? The shutting up the house might be considered as a refusal to pay the notes there. *Howe v. Bowes*, 16 *East*, 112. But upon error brought in the exchequer chamber, the judgment of the court of king's bench was reversed. *Per Mac-*

donald, C. B. "This question is extremely simple; it depends entirely on the force and effect of an allegation in the declaration, which it is said dispenses with the necessity of presenting the notes in question. The question then is, whether this allegation, that the plaintiffs in error ceased and wholly declined and refused to pay at Workington bank, any notes issued by them from such bank, carries the matter further than a mere allegation of insolvency; and it is not alleged that this declaration, that they would pay none of their notes, was made to the plaintiffs below; it is merely this, that they generally declared that they neither could nor would pay any of their notes. This allegation does not appear to the judges to be sufficient to enable the plaintiff below to maintain the action." *Bowes v. Howe*, 5 *Taunt.* 30.

When a bill on a wrong stamp is indorsed in payment for goods, the party receiving it may treat such bill as a nullity, and need not present it. *Wilson v. Vysar*, 4 *Taunt.* 288.

As the crown cannot be guilty of laches, a party holding the bill on behalf of the crown need not present it when due. *West on Extents*, 29, 30. 1*st ed.*

The mere knowledge on the part of the drawer or indorser of a bill, that the bill when presented is likely to be dishonored, will not dispense with the presentment. Thus when the drawer of a bill, the day before it became due, said to the holder, that he hoped it would be paid; that he would see what he could do, and would endeavour to provide effects, there being no proof of due presentment, Lord Ellenborough held, that there did not appear to be a default on the part of the drawee, and the plaintiff was nonsuited. *Prideaux v. Collier*, 2 *Stark.* 57. So where in an action against the drawers of a bill, there was no proof of presentment or notice, but it appeared that the defendants had given orders to the drawees not to pay the bill if presented, and that those orders had been communicated to the plaintiffs Abbott, C. J. was of opinion, that the defendant's order to the payees [drawees] not to pay the bill if presented, amounted to a dispensation of the notice of dishonor, but that it formed no excuse for the non-presentment for payment. *Hill v. Heap*, *Dow. & Ryl. N. P. C.* 57.

Excused—by part payment, or by subsequent promise to pay.] Payment of part of the money due upon a bill or note, or a subsequent promise to pay, with knowledge that the bill has not been duly presented, will dispense with proof of the presentment. Thus in an action upon a promissory note by an indorsee against the indorser, it was proved that the defendant had paid part of the money, and Lee, C. J. held that sufficient to dispense with the proving a demand upon the maker of the note. *Vaughan v. Fuller*, 2 *Str.* 1246. So in an action against the indorser of a note, there was no evidence of presentment or

notice, but it was proved that the defendant, two years after the note was due, being requested to pay it, promised he would, but prayed for further time, Bayley J. ruled, that where a party to a bill or note, knowing it to be due, and knowing that he was entitled to have it presented when due, to the acceptor or maker, and to receive notice of its dishonour, promises to pay it, it is presumptive evidence of presentment and notice, and he is bound by the promise so made. *Taylor v. Jones*, 2 *Campb.* 106. So where the indorsee of a bill, after it was due, being applied to for payment said, that *if the witness would call again in a day or two and bring the account, he would pay it*, it was held by the court of K. B. that this acknowledgment dispensed with proof of the presentment. *Per Lord Ellenborough* "When a man against whom there is a demand promises to pay it, for the necessary facilitating of business between man and man everything must be presumed against him. It was therefore to be presumed *primâ facie*, from the promise so made, that the bill had been presented for payment in due time and dishonored, and that due notice of it had been given to the defendant." *Lundie v. Robertson*, 7 *East*, 231; *and see Haddock v. Bury*, *Id.* 236. (*n*), *post*. *Hodge v. Fillis*, 3 *Campb.* 464.

In an action against an indorser of a bill, it appeared that the bill had been presented at Hammersley's bank after banking hours, but it was proved that after the declaration was filed, (which alleged the bill to have been duly presented), the defendant had applied for the indulgence of a further extension of time to pay the bill, but it did not expressly appear that when the defendant applied for the indulgence, he was apprised of the objection to the presentation. The plaintiff being nonsuited, on an application for a new trial, the court thought it should have been left to the jury to say whether, under the circumstances of the case, the defendant had notice at the time of his application for indulgence, that there had been no due presentation, and granted a rule for a new trial. *Hopley v. Dufresne*, 15 *East*, 275.

The following case, as reported, is at variance with the other authorities on the subject. The defendant was sued as indorser of a bill, but instead of proving presentment, the plaintiff called a witness, who stated, that in a conversation with the defendant, he said he knew he was discharged, but that the plaintiff had behaved so well to him in many matters that he should take no advantage of it, but would pay the money. Lord Ellenborough is reported to have said, that this was not of itself sufficient; that it was necessary to prove a demand upon the acceptor, and a refusal by him to pay the money, as the liability of the defendant only arose by reason of his default. A subsequent demand being proved, the plaintiff had a verdict. *Brown v. M'Dermot*, 5 *Esp.* 265; *see also Hill v. Heap*, *Dow. & Ryl. N. P. C.* 57. *ante*, *p.* 167.

Excused—by inevitable accident.] When the holder of a bill is prevented by accident, not arising from his own misconduct, from presenting a bill when due, he will not thereby discharge any of the parties, provided he present it as soon afterwards as he is able. Thus in a Scotch suit, the opinion of London merchants was obtained, who stated, that any cause which has prevented the holder of a bill or note from presenting it, without his fault, such as his detention by contrary winds, his being robbed of the bill, or the like, will excuse him equally from not protesting it. *Young v. Forbes, Morr.* 1580. *Thompson,* 483. So it is said by *Molloy, pl.* 27., that if a bill of exchange, by contrary winds, or other occasions, be so long on its way, that the usance or time limited by the bill be expired, and being tendered, acceptance and payment are denied, protests for both must be made, and the drawer must answer the value. *And see Pothier, pl.* 144. Where a bill payable at Leghorn was not presented when due, but the plaintiff proved, that owing to the state of the country, Leghorn being occupied by the enemy, it was impossible to present the bill, and had a verdict, on a motion for a new trial, the court refused to grant a rule. *Per Lord Ellenborough,* "*Duly presented,* is presented according to the custom of merchants, which necessarily implies an exception in favour of those unavoidable accidents which must prevent the party from doing it within the regular time, and it was left to the jury to say, whether from the situation of the country it was possible for the plaintiff to present it in due time." *Patience v. Townley,* 2 *Smith,* 224.

CHAPTER VIII.

OF THE ACCEPTANCE OF BILLS.

By whom.
At what time.
Form.
Verbal.
What amounts to a good acceptance not on the bill.
What is a good acceptance on the bill.
What acts, when there is no express acceptance or promise to accept, will amount to an acceptance.
Special acceptance at a particular place.
Conditional acceptance.
Acceptance varying from the terms of the bill.
Acceptance supra protest.
Liability of the acceptor *supra protest.*
Remedy of acceptor *supra protest.*
Cancellation of acceptance.

By whom.] Acceptance must be made by the drawee or by his agent duly authorised, or by some person, on the refusal of the drawee, for the honor of some other party to the bill. Acceptance for honor will be subsequently considered. Where the acceptance is by an agent, he must, if required, produce his authority to the holder, and if such authority be not clear and express, such holder may consider the bill dishonored and act accordingly. *Beawes, pl.* 87. Though it is said that when the authority is clear, the holder is bound to take such an acceptance. *Ibid.* But it seems that the holder would in any

case be justified in refusing an acceptance by agent, as it multiplies his proofs. *See Coore v. Callaway*, 1 *Esp.* 115. *Richards v. Barton*, *Id.* 268. A person taking such a bill on the authority of an agent ought to exercise due caution, for he must take it upon the credit of the party who assumes the authority to accept, and it would be only reasonable prudence to require the production of that authority. *Per Bayley, J. Attwood v. Munnings*, 7 *B. & C.* 283. If an agent accept a bill directed to him in his own name, he will, as already stated, *ante, p.* 47., be personally answerable as acceptor. Where a bill is drawn upon one it cannot be accepted by more than that one. Thus where in pursuance of an agreement to guarantee the acceptance of Irving, Hudson wrote under the acceptance of Irving, "Accepted, J. Hudson," Lord Ellenborough held that Hudson was not liable to be sued as acceptor, and that his undertaking was clearly collateral. *Jackson v. Hudson*, 2 *Campb.* 447. The mode in which, *ante, p.* 59., and the cases in which, *ante, from p.* 60 *to p.* 67., one partner may bind his copartners, have been already stated. Where a bill is drawn upon several persons not partners, and one of them accepts it, this will bind him and not the rest. *B. N. P.* 270. Where a bill contains a direction to no particular person, but, instead of the direction, is made payable at a particular place, it may be accepted by the person resident at that place. *Gray v. Milner*, 8 *Taunt.* 739. 3 *B. Moore*, 90. *S. C. ante, p.* 22.

At what time.] Whether in any case a bill can be accepted before it is drawn does not appear to be finally determined. In *Pillans v. Van Mierop*, 3 *Burr.* 1663, it was the opinion of the court that such an acceptance would bind. In that case the plaintiffs wrote to the defendants to know whether they would accept such bills as they (the plaintiffs), should draw upon them for 800*l.*, and the defendants having agreed to honor the bills, they were drawn. The defendants afterwards refused to pay, but the court was of opinion that the defendants' agreement to honor amounted to an acceptance; Mr. Justice Wilmot said, "An agreement to accept a bill to be drawn in future, would by connection and relation bind on account of the antecedent relation, and I see no difference between its being before or after the bill was drawn," and Mr. Justice Yates, said, "It was an acceptance of this very draught by connection and relation, though the bill was not then drawn by the plaintiffs on the defendants." *Pillans v. Van Mierop*, 3 *Burr.* 1663. In the following case the general doctrine laid down in *Pillans v. Van Mierop*, was much qualified. The defendant being indebted to one Ruff, promised that if Ruff would draw on him a bill at two months, from the 25th October, for the amount, he would pay it. The bill was accordingly drawn and indorsed to the plaintiffs; and the defendant was sued as acceptor; Le Blanc, J.

was of opinion that a mere promise such as this, to accept a bill when it should be drawn, at least unless made to a third person, or accompanied with circumstances which might induce a third person to take the bill, (which was not the case here), did not amount to an acceptance, and the plaintiffs were nonsuited. On motion to set aside the nonsuit the court refused the application. And *per Lord Kenyon*, "This was a promise to accept a non-existing bill, which varies this case from all those which have been decided on the same subject; and I do not know by what law I can say that such a promise is binding as an acceptance." His lordship added, that he thought that admitting a promise to accept before the existence of the bill, to operate as an actual acceptance of it afterwards, even with the qualifications last mentioned (viz. where credit has been given by a third person on the faith of such a promise), was carrying the doctrine of implied acceptances to the utmost verge of the law, and he doubted whether it did not even go beyond the proper boundary. *Johnson v. Collings*, 1 *East*, 98. So in an action by the indorsee against the acceptor of a bill it appeared that before the bill was drawn the defendant had written to the drawer on the 9th inst., stating that on receiving an acknowledgment he would pay due honor to any bills he might draw. After the bill was drawn, the defendant on the 18th stated that it would not be accepted until a certain ship with wheat arrived from Scotland. *Per Gibbs, C. J.* "As there is no evidence that the letter of the 9th was communicated to the holder of the bill, I am of opinion that *Johnson v. Collings* is an express authority to show that it does not operate as an acceptance, the bill being not then drawn; but if the jury are of opinion that the answer given on the 18th, according to the use of language in commercial dealings, imported a promise to accept the bill on the arrival of the cargo, I am of opinion that the cargo having arrived, the defendant is now liable as acceptor." *Milne v. Prest*, 4 *Campb.* 393. *Holt*, 181. *S. C.* It is advisable therefore in all cases (and it is necessary in cases of inland bills since the statute 1 & 2 Geo. 4. c. 78. *see post*,) to declare specially upon the agreement, where a person has undertaken to accept a bill of exchange before it has been drawn. (*Note* 36.)

It has not been decided whether a person who writes his name as acceptor upon a blank bill properly stamped will be liable to be sued as such, but it seems from the cases which have been determined with regard to the liability of a drawer and indorser in such case, he would be liable. *Ante*, *p.* 73.

A bill may be accepted even after it is due, and the effect of such acceptance is to render the bill payable on demand. *Jackson v. Pigott*, 1 *Ld. Raym.* 364, 1 *Salk.* 127, *Carth.* 459. *S. C.* *Mitford v. Walcott*, 1 *Ld. Raym.* 574. 1 *Salk.* 129. 12 *Mod.* 410. *S. C.* And there may be an acceptance after a previous refusal to accept. *Wynn v. Raikes*, 5 *East*, 514.

Form — verbal.] At common law a verbal acceptance of a bill was in all cases good; *Lumley v. Palmer*, 2 *Str.* 1000. *Julian v. Shobrooke*, 2 *Wils.* 9. *Clavey v. Dolbin*, *Rep. temp. Hardw.* 278. *Sproat v. Matthews*, 1 *T. R.* 182. *Powell v. Monnier*, 1 *Atk.* 612. *Pillans v. Van Mierop*, 3 *Burr.* 1662. *Clarke v. Cock*, 4 *East*, 57. *Wynne v. Raikes*, 5 *East*, 514. *Fairlee v. Herring*, 3 *Bingh.* 625; although by the statute 3 & 4 Ann. c. 9. s. 5, it was enacted that no acceptance of any inland bill of exchange shall be sufficient to charge any person unless the same be underwritten or indorsed thereon; but as the statute contains a proviso that it shall not extend to discharge any remedy that any person may have against the acceptor, it was held (before the passing of 1 & 2 Geo. c. 78.) that a parol acceptance of an inland bill was good. *Lumley v. Palmer*, 2 *Str.* 1000. *Windle v. Andrews*, 2 *B. & A.* 699. By 9 & 10 W. 3. c. 17. s. 1. it was provided that an inland bill cannot be protested for nonpayment unless accepted in writing, and now by stat. 1 & 2 Geo. 4. c. 78. no acceptance of any *inland* bill of exchange shall be sufficient to charge any person unless the acceptance be in writing on the bill, or if there be more than one part of the bill on one of the parts. But foreign bills may still be accepted by parol. *Fairlee v. Herring*, 3 *Bingh.* 625.

What amounts to a good acceptance, not on the bill.] It has been already stated, that, in order to charge the drawee of an *inland* bill, the acceptance must be *in writing on the bill*; but, in case of foreign bills, the acceptance need not be in writing, nor, if in writing, on the face of the bill. Thus, it is said in *Molloy*, that if a bill of exchange be tendered, and the party subscribes *accepted*, or *accepted by me A. B.*, or being on the Exchange, says, "*I accept the bill, and will pay it according to the contents*;" this amounts, without all controversy, to an acceptance. *Molloy*, *b.* 2. *c.* 10. *s.* 15. Again, a small matter amounts to an acceptance, so that there be a right understanding between both parties; as, "*Leave your bill with me, and I will accept it*;" or, "*call for it to morrow, and it shall be accepted*," that does oblige as effectually by custom of merchants, and according to law, as if the party had actually subscribed or signed it. But, if a man should say, "*Leave your bill with me; I will look over my accounts and books between the drawer and me, and call to morrow, an daccordingly the bill shall be accepted*;" this shall not amount to a complete acceptance; for this mention of his books and accounts was really intended to see if there were effects in his hands to answer, without which, perhaps, he would not accept, and so it was ruled by Lord C. J. Hale, at Guildhall. *Molloy*, *b.* 2. *c.* 10. *s.* 20. *Vin. Ab. Bills of Exchange.* (1). *B. N. P.* 270. So, where the drawee of certain bills wrote thus, "The two bills of exchange which you sent me, I will pay

them, in case the owners of the Queen Anne do not. I do not expect they will pay them, but judge it proper to take their answers," this was held to be an acceptance. *Wilkinson v. Lutwidge*, 1 *Str.* 648. *See also Powell v. Monnier*, 1 *Atk.* 611. So, also, where the indorsees of a bill sent it to the drawees, who delivered it back, saying, "it would not be accepted till a navy bill was paid." This was held to be a conditional acceptance. Per Lord Mansfield, 'I consider what the defendants did an acceptance. It has been truly said, as a general rule, that the mere answer of a merchant to the drawer of a bill, saying, "*He will duly honour it*," is no acceptance, unless accompanied with circumstances which may induce a third person to take the bill by indorsement; but if there are any such circumstances, it may amount to an acceptance, though the answer be contained in a letter to the drawer." *Pierson v. Dunlop, Cowp.* 573. So, where the drawee of certain bills stated by letter, that the holder might return them to his correspondent, and they should be accepted, the Lord Chancellor said, that it was clearly settled at law, that such a letter, an undertaking to accept, was an acceptance. *Ex parte Dyer*, 6 *Ves.* 9. One Woodward, having funds in the hands of the defendant, wrote to inform him, that he had drawn upon him for the amount, to which the defendant replied, that the drafts "should meet due honour from him." After receiving this answer, Woodward indorsed the bills to the plaintiffs, and, at the same time, either communicated to them the purport of the defendant's letter, or informed them, that the defendant had positively undertaken to accept the bills, but did not shew the defendant's letter to them. The court held this to be a good acceptance. *Per Lord Ellenborough*, "Does not a promise to accept an *existing* bill (for I do not wish to consider the case so largely as the doctrine is laid down in *Pillans v. Van Mierop*, though that opinion is supported by great authority) amount to an acceptance, and bring the case directly within the doctrine, as recognised in *Johnson v. Collings*? (*ante*, *p.* 172.) Lord Mansfield, indeed, in *Pierson v. Dunlop*, is reported to have said, that "the mere answer of a merchant to the drawer of a bill, *that he would duly honour it*, is no acceptance, unless accompanied with circumstances, which may induce a third person to take the bill by indorsement;" but that clashes with what he said in *Pillans v. Van Mierop*, and is contrary to what was there said by Mr. Justice Yates. Then, here was an undertaking by the defendants in writing, by a collateral paper, to accept the bills, which induced a credit, without which the plaintiffs would not have given value for them." *Clarke v. Cock*, 4 *East*, 57. The doubt adverted to in the above cases, viz. whether a collateral promise to accept would operate as an acceptance of an existing bill, where the bill has not been taken by a third person, on the credit of such promise, was settled in the fol-

lowing case. On the 9th of November, 1801, Brown, in America, drew the bill in question on the defendants, and, advising them of it, requested them to honor it. The plaintiffs, to whom the bill had been indorsed, presented the bill to the defendants, but they refused to accept. Afterwards, in a letter to Brown, the drawer, the defendants said, "our prospect of security is so much improved, that we shall accept, or certainly pay, all the bills which have hitherto appeared." In an action by the indorsees against the defendants, as acceptors, the court were of opinion, that this letter was an acceptance. "The first question in this case," said Lord Ellenborough, "is, whether this promise be an acceptance. If either branch of the alternative contained in this promise would be an effectual acceptance, if standing alone, surely it cannot be less so because the promise is couched in the terms of an alternative, of which each branch is an acceptance. A promise to accept an existing bill is an acceptance. A promise to pay is also an acceptance. A promise, therefore, to do the one or the other, *i. e. to accept, or certainly pay*, cannot be less than an acceptance. The second question in this case is, whether inasmuch as the bill was not taken by the holders upon the credit of this promise made to the drawer, nor was the same known to them to have been made at all till after the bill was due, the holders can avail themselves of it as an acceptance? In the case of *Powell v. Monnier*, 1 *Atk.* 612, already mentioned, that which was holden as an acceptance enuring to the benefit of the indorsees, the plaintiffs, was an acceptance, contained in a letter to the drawer, one Newburgh, promising *that the bill should be duly honored*. The promise being long subsequent to the time when the plaintiffs in that case became possessed of the bill by indorsement, could, of course, have formed no part of their original inducement to take it. And the promise was, in that case, as well as in this, made to a drawer, who had drawn without having any effects in the acceptor's hands, and it does not appear in one case more than in the other, that the holders, the plaintiffs, ever knew of the acceptance on which they afterwards relied, prior to the time when the bill became due." *Wynne v. Raikes*, 5 *East*, 514. Wherever a collateral promise of this nature is conditional, it must appear that the condition has been performed, before the drawee can be sued as acceptor. Thus, where one of the drawees of a bill, meeting the payee, said, 'If you will send it to the counting-house again, I will give directions for its being accepted;' in an action against the drawees, as acceptors, Lord Ellenborough said, this was only a conditional promise to accept, and could not operate as an acceptance till the bill was sent back to the counting-house. The plaintiff was therefore nonsuited. *Anderson v Hick*, 3 *Campb.* 179. The promise to accept must also be clear and unequivocal, or it will not amount to an accept-

ance. Thus where the drawers of a bill wrote to the drawees, "Yesterday we valued on you, favor W. J. & Co. two months for 100*l.* which please to honor," and the defendants replied, "Your bill shall *have attention*," the court were of opinion, that this did not amount to an acceptance. *Per Abbott, C. J.* "I think, that if a letter, written to the drawer of a bill, is to be holden to amount to an acceptance of the bill, that letter ought to be in terms which do not admit of any doubt. The phrase *shall have attention* is at least ambiguous; it may mean, that the defendants would examine and inquire into the state of the accounts between them, for the purpose of ascertaining whether they would accept the bill or not. If, indeed, it could have been shewn, that these words, either generally in the mercantile world, or as between these individual parties, meant an acceptance of the bill, the case would have been different." *Rees v. Warwick*, 2 *B. & A.* 113. The defendants were sued as acceptors of a bill. It appeared upon a case reserved, that the defendants being engaged in a mining speculation, sent out one Mornay, as their agent to Mexico, and one Exter as an agent under him. Exter, by the direction of Mornay, and with the consent of the defendants, drew the bill in question, amongst others, upon the defendants, and it came, by indorsement, into the hands of the plaintiffs. Before the bill could be presented for acceptance, the defendants had sold part of their interest in the mines, and the purchasers would have provided for the bill, but the defendant Powles begged of Mornay, who now acted for the purchasers, that a certain sum might be placed in defendants' hands, to take up the bills, saying it would be unpleasant to have bills drawn on their firm, paid by a third party. It was then agreed, that he should have money, for the specific purpose of paying these bills. No acceptance was written on the bills when left at the defendants' house for that purpose, but when Mornay afterwards told Herring, one of the defendants, that the bills were not accepted, he said, "*What, not accepted? we have had the money, and they ought to be paid; but I don't interfere in this business: you should see Mr. Powles.*" The court of C. P. were of opinion, that this was a good acceptance of the bill, though an objection was taken, that it was not a promise made to one of the parties to the bill. *Per Best, C. J.* "I consider it is a promise made to one of the parties to the bill. Who is the drawer?—Exter. Exter is the sub-agent of Mornay. I consider Exter and Mornay the same. There is, therefore, a promise to pay to these persons; and, as was said by Mr. Justice Le Blanc, in a case that was referred to in argument, 'If a man promises to pay a bill, he promises to do all the formal part.' It has been determined, in a great variety of cases, that if a bill comes into a man's hand, with a parol acceptance, though the party who receives the bill does not know of that parol acceptance, he has

a right to avail himself of it afterwards." *Fairlee v. Herring*, 3 *Bingh.* 625. In an action against the defendant, as acceptor of a bill, the proof of acceptance was, that after the bill had been left with him for acceptance, he returned it to the plaintiff's clerk, saying, "There is your bill; it is all right." But Lord Kenyon ruled, that these words could by no implication amount to an acceptance, for that they conveyed no evidence of the defendant's intention to bind himself to the payment of the bill at all events, which was necessary for the purpose of charging him as acceptor. *Powell v. Jones*, 1 *Esp.* 17. The indorsees of a foreign bill, payable sixty days after sight, presented it, on the 2d August, to the drawees for acceptance, who refused to accept, and it was thereupon protested for non-acceptance. On the 10th October it was again presented for payment, with a memorandum of the expence of noting, and a copy of the protest. One of the drawees then said, "this bill will be paid; but we cannot allow you for a duplicate protest." The court of King's Bench held this to be no acceptance. *Per Lord Ellenborough*, "In this case, the defendants (the drawees) had, as it were, commenced the work of discharging the bill, and were on the very brink of paying it, when the subject of the charge of the duplicate protest is started, which causes them to hold their hand. But, at this time, neither of the parties were treating about accepting the bill, nor was it ever mentioned, or contemplated by them. All that was thought of it was the payment of the bill. If, therefore, this could enure as an acceptance, it would enure against the plain intent of the parties." *Anderson v. Heath*, 4 *M. & S.* 303.

A promise to accept, made upon an executory consideration, is in no case binding, so long as such consideration remains executory, unless it influence some person to take or retain the bill. *Bayley*, 145. *Pillans v. Van Mierop*, 3 *Burr.* 1666.

What is a good acceptance on the bill.] A bill may be accepted either by writing upon it the word *accepted*, and subscribing the drawee's name, or by writing *accepted* only, or by writing the name only. (*Note* 37.) It is said by Holt, C. J. that if the drawee underwrites a bill "presented" such a day, or only the day of the month, it is such an acknowledgment of the bill as amounts to an acceptance, and this was declared by the jury to be the common practice. *Anon. Comb.* 401. *Poth. pl.* 45. Where a bill was drawn as follows, "To Mr. R. Withy, —Sir, Please to pay to Mr. Scot, or order, 30*l.* T. N." and Withy underwrote it thus, "Mr. Jackson, please to pay this note and charge it to Mr. Newton's account. R. W." it was objected that this was only a direction to Jackson to pay 30*l.* out of a particular fund, but the court said that it signified not to what account it was to be placed when paid, and that it clearly was a sufficient acceptance. *Moor v. Withy*, *B. N. P.* 270.

Where a bill was sent to the drawee for acceptance, and he entered it in his bill book, which was his practice with all bills he received, whether he meant to accept them or not, and wrote upon it the number of the entry and kept it ten days, and also wrote upon it the day of the month and returned it, saying, he could not accept it; *Per Lord Hardwicke*, "It has been said to be the custom of merchants that if a man underwrites any thing, be it what it may, it amounts to an acceptance, but if there were nothing more than this in the case I should think it of little avail to charge the defendant." *Powell v. Monnier*, 1 *Atk.* 611, *see ante, p.* 173. It has been said that underwriting or indorsing a bill thus, "I will *not* accept this bill," is held by the custom of merchants a good acceptance; *Rep. temp. Hardw.* 75. (*n.*) but *per* Lord Mansfield in *Peach v. Kay, Sittings after T. T.* 1781, *Bayley*, 143, "It was held by all the judges that an express refusal to accept, written on the bill, where the drawee apprised the party who took it away what he had written, was no acceptance; but if the drawee had intended it as a surprise upon the party and to make him consider it as an acceptance, they seemed to think it might have been otherwise." *See ante, p.* 17. It has been said by Lord Kenyon that if the drawee of a bill deface it he is liable as acceptor; about forty years ago it was thought that if a man wrote any thing upon a bill he was to be bound as acceptor; so that if a man had set down some sums of money, and cast them up on the back of the bill, that would amount to an acceptance; "but this is a doctrine," continued his lordship, "to which I cannot subscribe; but if a party puts upon a bill that which essentially injures and defaces it, that makes him liable as acceptor." *Per Lord Kenyon, Trimmer v. Oddy, Chitty*, 242. *5th ed.*

What acts, where there is no express acceptance or promise to accept, will amount to an acceptance.] It seems doubtful whether an acceptance (of a foreign bill), can be implied from the acts of the drawee, where there is no express acceptance or promise to accept. In an action against the acceptor the evidence of an acceptance was this. The bill being presented for acceptance was refused by the drawee because he had no effects. A little time afterwards the plaintiff's agent met the drawee and asked him if he could not help to secure him his debt, and he said, he would if he could, for he had now some effects in his hands; whereupon the plaintiff's agent immediately wrote for the bill and presented it to the drawee, who bid him leave the bill and he would examine into it, and it was left with him eight or ten days, and then the agent called again and the drawee offered to let him sell some of the effects to pay himself, which the agent refused. *Per Hardwicke, C. J.* "Indeed it has been adjudged that a parol acceptance will be good, and possibly leaving the bill ten days with the drawee might of itself be such a consent

as to amount to an acceptance; but this not so, for you must take the whole together, and there must be evidence of a contract to charge the acceptor; whereas it is otherwise upon this evidence." *Clavey v. Dolbin, Rep. Hardw.* 278. But where the payee transmitted a bill to the drawee, desiring him to accept it and to hand it over to the payee's agent, and the payee hearing nothing from his agent wrote to the drawee remonstrating on the delay, and the latter answered that he had retained the bill because he had once meant to accept it, which he now declined doing, Lord Ellenborough said this was clearly an acceptance. "If a bill is left for the express purpose of being accepted and is retained by the drawee, such retention is as much an acceptance as if he had written his name upon the face of it." *Harvey v. Martin*, 1 *Campb.* 425. (*n.*) *Bayley*, 149, *S. C. and see Irving v. Foster*, 2 *Smith*, 245. The authority of the case of *Harvey v. Martin*, has been much shaken by the following decisions. One Godfrey on 28th May drew a bill upon the defendant payable at sight. On the following day the plaintiff, the payee, made an application to the defendant either for payment or acceptance of the bill, it did not clearly appear which; the bill was neither paid nor accepted. For some reason which did not appear it was left in the possession of the defendant, where it remained till the 9th July, when he destroyed it. Lord Ellenborough, who tried the cause, was of opinion that this amounted to an acceptance, but the court of K. B. (*diss. Ld. Ellenborough*) held otherwise. *Per Lord Ellenborough*, "I certainly proceeded on the ground that it was the ordinary and recognised custom of merchants, that when a bill has been left for acceptance, if after a reasonable time has expired the party omitted to return the bill, he must be considered as having retained the bill for acceptance. This case goes still futher, for here the defendant by his own act puts it wholly out of his power ever to return it." *Per Bayley, J.* "Where a bill is in the usual course of business left for acceptance, it is the duty of the party who leaves it to call again for it, and to enquire whether it has been accepted or not. It is not, as it seems to me, the duty of the other person to send it to him, unless as in the case cited of *Harvey v. Martin*, there is a usual course of dealing between the particular individuals so to do. Here the party who left the bill does not appear to have even called or sent for it, and that materially affects the present case. I forbear to say at present what would be my judgment on the effect of a destruction of an instrument by the party with whom it was left for acceptance, within the reasonable time during which the other party might expect an acceptance of the bill. If a party says that he has destroyed the bill, and that he will not accept it, such destruction might probably subject to an action of trover for the bill, but I cannot think that it would amount to an acceptance of it." *Per Holroyd, J.* "I have always understood that where a bill is left for

acceptance, and is not returned when called for, and any act of ownership has been exercised with respect to the bill, by the party with whom it was left for acceptance, that it amounted to an acceptance. But I cannot say that the mere non-return of the bill, unaccompanied with any act of disposing of it, is so." *Jeune v. Ward*, 1 *B. & A.* 653. The vendor of goods had been in the habit of drawing bills in payment upon the vendee, and discounting the same with bankers, by whom the bills were transmitted by post for acceptance. The vendee cautioned the bankers to inquire when they discounted any such bills, whether the goods for which such bills were respectively drawn had been delivered, and assured them that in that case they would be accepted. The bankers afterwards discounted a bill, and transmitted the same for acceptance to the vendee, who detained it in his possession for ten days, and then informed the bankers that he could not accept the bill, as the invoice of the goods had not been delivered; and after a further interval of sixteen days, the bankers having made no objection to his detaining the bill, returned the same, the vendor having then stopped payment without delivering the goods, or sending the carrier's receipt. It was held that the drawee of the bill was not, under these circumstances, liable as acceptor. *Per Bayley, J.* "Constructive acceptances ought to be watched with the utmost care, for when a party puts his name on a bill, he knows what he does, and that he thereby enters into a contract; but it is laying down a very loose and dangerous rule, where any degree of latitude is given to these cases of constructive acceptances. A constructive acceptance is when the drawee, instead of actually putting his name upon the bill, assents to become liable as acceptor. In any such case the consent of the party, sought to be charged as acceptor, should be clearly to be inferred from his conduct." *Mason v. Barff*, 2 *B. & A.* 26. (*Note* 38.)

Upon a request to A. to accept a bill and draw upon B. for the like sum, the mere act of drawing upon B. does not amount to an acceptance by A. *Smith v. Nissen*, 1 *T. R.* 269.

A case was reserved for the opinion of the court of Common Pleas, which, amongst other things, stated, that it is customary among bankers in London, in their dealings with each other, not to pay any check which is presented by or on behalf of another banker after four o'clock in the afternoon, but merely to give an answer to the person so presenting it, whether it is a good check or not; and in case the check is approved, a mark is made upon it either by the person presenting it or by the person who gives the answer, and a check so marked is considered as entitled to priority of payment on the next day. Upon this part of the case, Mansfield, C. J. said, "The draft was carried to the house of the drawee, and in the language of those persons was marked; the effect of that marking is similar to the accepting of a bill; for he admits hereby assets and makes himself

liable to pay. It is the practice of bankers, not to pay bills of this description which are presented after four o'clock, but to mark them, and it is usual that bills marked on one day are carried to the clearing house, where their clerks meet, and paid there on the next day. Therefore it is the same thing as if a banker had written on a check—We pay this to-morrow at the clearing house." *Robson v. Bennett*, 2 *Taunt.* 388. *and see Fernandez v. Glynn*, 1 *Campb.* 426, (*n.*) *post*, *p.* 193.

Special acceptance at a particular place.] Before the decision of the case of *Rowe v. Young*, 2 *B. & B.* 275, which was finally determined in the House of Lords, the courts of King's Bench and Common Pleas differed in their construction of an acceptance, expressing the bill to be payable at a particular place.

In the following cases it was held that an acceptance at a particular place was a qualified acceptance, and that it was necessary, in order to charge either the acceptor or the drawer or indorser, to present the bill at that place. In an action against the acceptor of a bill, accepted payable at Ramsbottom's, the declaration contained no averment of the bill having been so accepted; notwithstanding which the plaintiff had a verdict, subject to the opinion of the court of Common Pleas, who directed a nonsuit to be entered. *Callaghan v. Aylett*, 3 *Taunt.* 397. *and see Ambrose v. Hopwood*, 2 *Taunt.* 61, *ante*, *p.* 149. In an action against the drawer of a bill, accepted payable at Batson's, the declaration stated that the bill was so accepted, but did not contain any averment of the presentment of the bill at Batson's: on demurrer the court of C. P. held the declaration ill. *Per Heath, J.* "In the case of *Callaghan v. Aylett*, (*supra*), we were of opinion that there was a qualification of the contract by the special acceptance, and that therefore it was a condition precedent, and must be shown to be performed. I continue of the same opinion and it is unnecessary to go into all the cases." *Gammon v. Schmoll*, 5 *Taunt.* 344. 1 *Marsh.* 80. *S. C.* Where, in an action against the drawers of a bill of exchange, the declaration stated that the drawee accepted it at the house of certain persons using the names, style and firm of K. and Co. and averred a presentment to those persons *according to the tenor and effect of the said bill and of the said acceptance thereon*, and the defendants pleaded a sham plea, and there was judgment for the plaintiffs, on error to the House of Lords the judgment was affirmed. Lord Erskine is said to have expressed himself, that if there had been no such averment as could have led to the proof of the due presentment, the declaration would have been bad, but that it must be apparent that upon that allegation due presentment might have been proved. Lord Eldon, C. is reported to have said, "The more the counsel for the plaintiff in error satisfies me that a presentment at the place at which the

bill was made payable is necessary, the more he satisfies me that I must intend by this allegation that such a presentment was made." *Huffam v. Ellis*, 3 *Taunt.* 415.

On the other hand, in the following cases it was held, that such an acceptance was not a qualified acceptance, but a mere memorandum as to the place of payment, and that it was not necessary in an action, either against the acceptor, or the drawer, or the indorser, to aver a presentment at the place. The first case in which this doctrine was established, appears to be that of *Smith v. Delafontain*, 1785, *coram Lord Mansfield, cited* 13 *East*, 464. *Holt*, 366; and it was again asserted by Lord Ellenborough in *Lyon v. Sundius*, 1 *Campb.* 423. That was an action against the acceptor of a bill, accepted payable at a special place, and his Lordship said, "How can you make the words, 'at Hankey & Co.'s' more than a mere memorandum? The acceptor of a bill of exchange is liable universally. This very point was brought before the court some time ago, when the judges were all of opinion, that such words formed no part of the contract, and did not require to be set out in the declaration." In the following case, the court of King's Bench, after argument, held the same doctrine to be law. In an action against the acceptor of a bill, the declaration stated, that the defendant accepted it according to the usage and custom of merchants, payable at Sikes & Co., but it did not contain any averment of a presentment there. Upon demurrer, the court were of opinion, that the declaration was sufficient. *Per Lord Ellenborough*, "We are placed on this occasion in an anxious situation, either by letting the case stand over for future consideration, without any declaration of our present opinion, to throw doubt upon that which has been, as long as I have any recollection of it, the general and received opinion of the commercial world upon this subject, or to decide this case adversely to one which appears to have been a recent decision, in point, of another court, for whose opinion we have great respect. In this situation I should wish, before this case is finally disposed of, to have an opportunity of further considering that decision: but I cannot abstain from stating, in the mean time, the grounds of my present opinion, subject however to any change, which upon further inquiry, I may see reason to adopt. Since I have been familiar with the practice and doctrine concerning bills of exchange, I have always understood that an acceptance, though stated to be payable at a certain house of trade, binds the party to pay the bill generally and universally, and that there is no occasion to make a demand at the particular place in order to found the right of action on the bill, but that the action itself is a demand on the party sued. For the information of the holders, bills are generally directed to the drawees at their usual place of residence; but it is no part of the contract that the bill shall be presented there. The drawees may change their resi-

dence while the bill is running, or they may dwell at one place and carry on their business at another: many persons during the hours when payments are usually made, are often occupied elsewhere than at their own houses; and, therefore, it has become a frequent practice, in order to avoid the inconvenience to the holder, of not having his bill honored when he calls for payment at the party's ordinary place of residence, to intimate his other house of residence, for the purpose, if I may so express it, which is, at his banker's, where he engages, as it were, to be found, at the usual hours of business; and this is done for the mutual convenience of both parties, the payer and the payee, not considering the house of payment mentioned, according to what was said in *Saunderson v. Judge*, as part of the contract between the parties, but merely as an intimation, for the convenience to both, of the place where the holder will be most likely to receive payment promptly. The case of *Bishop v. Chitty*, 2 *Str.* 1195, did not establish the contrary; that was nothing more than a converting of the party's acceptance into a draft upon his banker for the amount: and the court only held that the payee having taken the acceptor's draft on his banker in payment of the bill, and as a substitution for it; and not having presented the draft for payment in due time, the acceptor whose draft was so taken, was discharged by the laches of the holder. Then in *Smith v. Delafontain*, (*ante*, *p.* 182), *Lord Mansfield*, to whom the law of bills of exchange was as familiar as to any judge who ever sat on the bench, was of opinion, that no proof of presentation at a particular house of acceptance was necessary. I admit, that in *Callaghan v. Aylett*, (*ante*, *p.* 181,) a different doctrine prevailed; and, therefore, in giving the opinion which I now hold, I do it with a reserve to look into that case, and if I see grounds to suspend or alter my present opinion, I shall declare it before the end of the term. The law is the same, as to the demand of payment on other securities. The making of a bond payable on demand at *Lincoln's Inn Hall*, is no such term in the contract as to make it necessary, in an action on the bond, to allege a demand made at that place, in order to found the right of action; but, if the obligor were ready with his money there at the day, he must plead it as is matter of defence. So that in whatever way this case is considered, it appears to me, at present, that the action is maintainable, by shewing in the first instance, a demand upon him anywhere; and, I never can conceive, that the obligation to pay, which is universal upon the acceptor, is to be contracted and limited in its origin, by saying, that the bill was only payable at the particular place mentioned." No further notice was taken of the cause. *Fenton v. Goundry*, 13 *East*, 459. 2 *Campb.* 656. *S. C.*

So where in an action against the acceptor of a bill, accepted payable at a special place, on its being objected that there was

no proof of presentment at that place, Gibbs C. J. overruled the objection, and said, "After thirty-five years experience, in which I have never known this objection prevail, I cannot admit the necessity of this proof. In an action against the acceptor, where the bill is accepted payable at a particular place, as in the present case, it is not necessary to prove a demand at that place. He is generally and universally liable upon such an acceptance. It has been often so determined. I know there are conflicting cases, but I shall not require this proof." *Head v. Sewell, Holt*, 363.

In the foregoing cases the particular place of payment was only mentioned in the acceptance, but in the following case the place of payment was designated, both in a memorandum at the foot of the bill and in the acceptance. An action was brought against the acceptors of a bill directed thus, "To Messrs. T. & Co. Plymouth, payable in London." The defendants accepted the bill "payable at Sir J. Perring & Co.'s, bankers, London." The first count did not state that the bill was made payable at any particular place, either by the drawers or acceptors. The second count stated, that the bill was drawn payable in London and accepted payable in London, at Perring & Co's, and averred presentment there, but there was no proof of such presentment. Gifford for the defendants contended, that the plaintiff was not entitled to a verdict. He could not recover on the first count, for that did not properly describe the bill of exchange. The circumstance of the bill being made payable in London was an essential part of the original contract. The second count described the bill properly, but contained a material averment which had not been proved, viz. that the bill was presented when due at the banker's in London. Without at all considering the effect of an acceptance making the bill payable at a particular place, where it was drawn without any mention of a particular place of payment, there could be no doubt that where a particular place of payment is denoted, both by drawers and acceptors, that becomes a term of the contract between the parties, and an averment that the bill was presented for payment there, cannot possibly be rejected. Lord Ellenborough expressed himself to be of this opinion, but on the plaintiff's counsel proving that after the bill was due one of the defendants offered to pay it, Lord Ellenborough held, that this dispensed with direct evidence of a presentment for payment at the banker's, and the plaintiff had a verdict. *Hodge v. Fillis*, 3 *Camph.* 463.

At length the question was solemnly decided by the House of Lords, in the case of *Rowe v. Young*, 2 *B. & B.* 165. 1 *Holt*, 366. (*n.*) *semb. S. C.* The action below was commenced by the indorsee against the acceptor of a bill, accepted payable at Sir John Perring & Co., and the declaration containing no averment of the presentment of the bill at Sir John Perring & Co. the defendant below demurred, and the court of K. B.

gave judgment for the plaintiff below; a writ of error was thereupon brought, and the want of such presentment was assigned for special error. Several questions were submitted for the opinion of the twelve judges, upon which they differed in their opinions, which were delivered at great length. Lord Eldon C. and Lord Redesdale were of opinion, that the acceptance was a qualified acceptance, and that it was necessary to aver a presentment at the place in the declaration and to prove to such averment. The judgment below was reversed.

Soon after the above decision, the statute 1 & 2 G. 4. c. 78. was passed, by which it was enacted, That from and after the 1st day of August next, [1821,] if any person shall accept a bill of exchange, payable at the house of a banker, or other place, without further expression in his acceptance, such acceptance shall be deemed and taken to be to all intents and purposes a general acceptance of such bill; but if the acceptor shall in his acceptance express, that he accepts the bill payable at a banker's house, or other place only, and not otherwise or elsewhere, such acceptance shall be deemed and taken to be to all intents and purposes a qualified acceptance of such bill, and the acceptor shall not be liable to pay the said bill, except in default of payment, when such payment shall have been first duly demanded at such banker's house or other place.

Soon after the passing of the above act, a question arose upon the construction of it, in an action by the indorsee against the acceptor of a bill. The declaration stated that the drawer requested the defendant to pay to the order of the payee *in London*, the sum of, &c., and that the defendant accepted the bill according to the usage and custom of merchants. There was no averment or evidence of presentment *in London*. Upon a motion in arrest of judgment, the court of Common Pleas were of opinion that it was a case within the operation of 1 & 2 G. 4. c. 78. *Per Best C. J.* "The words of the act embrace any bill payable at a banker's or *other place*, and no distinction is made between the case where the bill is rendered so payable by the language of the drawer, and the case where it is rendered so payable by the language of the acceptor." *Selby v. Eden*, 3 *Bingh.* 611. In a similar case which occurred soon afterwards in the King's Bench, that court concurred in the judgment of the court of Common Pleas in *Selby v. Eden*, though Lord Tenterden added that he should have entertained some doubt whether the case fell within the statute 1 & 2 G. 4. c. 78. had it not been for the authority of *Selby v. Eden*. His lordship observed, that it was of great importance that there should be an uniformity of decision in the different courts of Westminster Hall upon all questions, but particularly upon questions affecting negotiable instruments of this description. Upon the authority of that case, therefore, the court were of

opinion that the rule for entering a verdict for the plaintiff should be made absolute. *Fayle v. Bird*, 6 *B. & C.* 531.

With regard to the right of the holder of a bill, to demand a special acceptance, it is said by Holt C. J., that if a bill be payable in London, and the person on whom it is drawn accepts it, but names no house where he will pay it, the party that has the bill is not bound to be satisfied with this acceptance. *Mutford v. Walcot*, 1 *Ld. Raym.* 575. *Rowe v. Young*, 2 *B. & B.* 182. 244. 248.

Conditional acceptance.] Although as already stated, *ante*, *p.* 12, a bill of exchange must be unconditional in its terms, yet a condition may be inserted in the acceptance, with the assent of the holder; and until this condition is performed, the acceptor will not be liable. Thus where a bill was accepted in these terms, "accepted for L. & G. of Leghorn, to pay as remitted from thence at usance," and it was objected, that the plaintiff had not shewn that there was any remittance from L. & G., and that this was not an absolute acceptance, but only conditional; Lee C. J. declared that he so understood it, and left it to the jury. *Banbury v. Lisset*, 2 *Stark.* 1211. A bill was presented to the drawee by the holder's clerk, when the former said, that the drawer had consigned a ship and cargo to him and another person at Bristol; but as he could not then tell whether the ship would arrive at London or Bristol, he could not accept at that time." On being applied to again, he said, "the bill was a good one, and it would be paid even if the ship were lost." The court held, that this was a conditional acceptance. The two conversations were to be considered together. The drawee accepted on two conditions, viz.; the one if the ship came to London, in which case he would be enabled to pay himself with the profits of the cargo; the other in case the ship was lost, when he would have wherewithal to satisfy the bill, he having a policy of insurance on the ship in his hands; but he did not accept in the third instance, which was in the event of the ship's going to Bristol. *Sproat v. Matthews*, 1 *T. R.* 128. The defendant accepted the bill, "to pay it when goods consigned to him were sold:" after verdict for the plaintiff, it was moved in arrest of judgment, that this acceptance, depending upon the contingency of the sale of goods, was not within the custom of merchants or negotiable. But the court upon consideration, held it good; for though the plaintiffs might have refused to take such an acceptance and have protested the bill, yet nobody could say he might not submit to it. *Smith v. Abbott*, 2 *Str.* 1152. The following have been held to be good conditional acceptances: "Upon account of the ship Thetis, when in cash for the said vessel's cargo." *Julian v. Shobrooke*,

2 *Wils.* 9. "It will not be accepted till the navy bill is paid," *Pierson v. Dunlop, Cowp.* 571. "It will not be accepted till the ship with the wheat arrives from Scotland," *Miln v. Prest,* 4 *Campb.* 393, "To be paid if a certain house should be given up to the acceptor on the 1st of June." *Swan v. Cox,* 1 *Marsh.* 176. "If you will send it to the counting house again, I will give directions for its being accepted." *Anderson v. Hick,* 3 *Campb.* 179.

The holder of a bill is not bound to take a conditional acceptance; but may insist upon an absolute acceptance, and if it is refused, may treat the bill as dishonored. *Smith v. Abbot,* 2 *Str.* 1152. *Gammon v. Schmoll,* 5 *Taunt.* 353. *Boehm v. Garcias,* 1 *Campb.* 425. (*n.*) *Rowe v. Young,* 2 *B. & B.* 220, 263. But if he take it, he is bound to observe the conditions. "If the holder of a bill take a conditional acceptance, it may be a question, whether he ought not to give notice to all the parties to the bill, and whether by omitting to do so he does not discharge them. It is true, that the holder is not bound to present the bill for acceptance; but I have always understood," continued Mr. Justice Bayley, "that if he does present it, and a qualified acceptance is given, he is bound to give notice." *Per Bayley J. Sebag v. Abitbol,* 4 *M. & S.* 466; *and see Mar.* 17, 18. *Kyd,* 138. (*See Note* 39).

A conditional acceptance must not be declared upon as an absolute one, even after performance of the condition. *Langston v. Corney,* 4 *Campb.* 177. *Ralli v. Sarell, Dow. & Ry. N. P. C.* 33.

If a man purposes making a conditional acceptance only, and commits that acceptance to writing, he should be careful to express the conditions therein; for it may at least be doubted, whether parol evidence of such conditions would be admissible; (*see Swan v. Cox,* 1 *Marsh.* 179.) if it were, the onus of proving them would be upon the acceptor, and the proof would be of no avail if the holder, or any person under whom he claims, took the bill without notice of such conditions, and gave a valuable consideration for it. *Bayley,* 155. The defendant, executrix of P. G. M. accepted a bill drawn by the plaintiffs for goods sold to P. G. M. In an action against her, she gave in evidence the following writing signed by the plaintiffs, and given her when she accepted the bill. "Received of E. A. M., executrix of P. G. M., an acceptance for 434*l.* 16*s.*, which we promise to renew from time to time, until sufficient effects are received from the estate of P. G. M." It was held that this writing was properly received in evidence for the defendant, for a party may by one writing change or contradict another, and there is no innocent indorsee here. *Bowerbank v. Monteiro,* 4 *Taunt.* 844.

Acceptance varying from the terms of the bill.] The drawee

may accept a bill with a variation in the terms of the acceptance from the terms of the bill, and if the holder elects to take such an acceptance, the drawee will be bound by it. Thus he may accept a bill varying the amount of the sum to be paid; *Wegersloffe v. Keen*, 1 *Str.* 214; *See Rowe v. Young*, 2 *B. & B.* 230; or the time of payment. Thus, where a bill was drawn without specifying the time of payment, and the drawee accepted it payable at a future day, this was held an acceptance within the custom of merchants, and binding upon the acceptor. *Walker v. Atwood*, 11 *Mod.* 190. So a bill may be accepted to pay half in money and half in bills. *Petit v. Wilson*, *Comb.* 452. A bill drawn payable on the 1st January, was accepted to pay on the 1st March. The holder struck out the 1st March and inserted the 1st January, and presented it according to that date for payment, which the acceptor refused. The holder then restored the acceptance to its original form, and Pemberton, C. J. ruled that the alterations did not destroy the bill. *Price v. Shute*, *Moll. b.* 2. *c.* 10. *s.* 28. Lord Kenyon observes on this case, that it is not said against whom the action was brought, and that it could not have been against the acceptor, whose acceptance was struck out by the party himself who brought the action; and he supposes that on the refusal to accept the bill as originally drawn, the holder resorted to the drawer. *Master v. Miller*, 4 *T. R.* 330. But in the same case Buller J. said that he could not consider the above case in any other light than as an action brought against the acceptor, for it only states what passed between those parties. *Id.* 336. In *Paton v. Winter*, 1 *Taunt.* 423, Lawrence J. observed that in *Master v. Miller*, three judges against Buller, J. thought there must have been some mistake in *Molloy's* account of the above decision, or that the case was not law. Notwithstanding this decision, it seems that any act by the holder of a bill manifesting a refusal to take a conditional or partial acceptance, as if he afterwards notes the bill for non-acceptance, will preclude him from taking advantage of the partial or conditional acceptance. *Sproat v. Mathews*, 1 *T. R.* 182. *Bentinck v. Dorrien*, 6 *East*, 199. But it would be otherwise if the noting or protest were done in ignorance of the acceptance. *Fairlee v. Herring*, 3 *Bingh.* 629. If the holder takes an acceptance varying in any respect from the terms of the bill, he ought to give notice to the other parties, *see ante p.* 187. And if the drawee has on presentment for acceptance engaged to pay only a part, and the holder has given notice of such partial acceptance to the other parties, he should, it is said, when the bill becomes due, receive of the drawee the sum for which he accepted, and cause a protest again to be made for non-payment of the remaining sum. *Mar.* 68. 85, 86. *Poth. pl.* 48.

Where the drawee will not give a general acceptance, but

offers an acceptance varying from the terms of the bill, the holder may treat the bill as dishonored, and after notice may sue the other parties. *Ante p.* 187. In an action against the drawer of a bill on Lisbon, "payable in *effective* and not *in vals reals*," the question was whether it had been dishonored for non-acceptance. The drawees offered to accept it payable it *vals denaros*, another sort of currency, which was refused. The defendant proposed to shew that *vals denaros* was sufficient to answer what was meant by *effective*; but *per Lord Ellenborough*, "The plaintiff had a right to refuse this acceptance. The drawee of a bill has no right to vary the acceptance from the terms of the bill, unless they be unambiguously and unequivocally the same. Therefore, without considering whether a payment in *denaros* might not have satisfied the term *effective*, an acceptance to pay in *denaros* was not a sufficient acceptance of a bill drawn payable in *effective*. The drawees ought to have accepted generally, and an action being brought against them on the general acceptance, the question would properly have arisen as to the meaning of the term." *Boehm v. Garcias*, 47 *Geo.* 3. 1 *Campb.* 425. (*n.*)

Acceptance supra protest.] An acceptance *supra protest* (*Note* 40) may be made either by the drawee or by a third person; by the drawee where he wishes to accept for the account and honor of some particular person; *Beawes, pl.* 33. 51. *Poth. pl.* 106. 112; by a third person for the honor of the drawer or indorser, upon the drawee's refusing to accept the bill, or not being found. *Id. pl.* 38, 39. Where a bill has been already accepted *supra protest*, for the honor of some particular person, another person may likewise accept it *supra protest* for the honor of some other party; *Beawes, pl.* 42. 58.; though as already stated, there cannot be more than one simple acceptor. *Jackson v. Hudson*, 2 *Campb.* 447.

It is said by *Beawes, pl.* 27. that if the holder of a bill has no reason to suspect the circumstances of the party who offers to accept *supra protest*, he cannot refuse the acceptance; *see also pl.* 36.; but the contrary was held in *Mitford v. Walcott*, 12 *Mod.* 410, where it was said that if A. draw a bill on B., who will not accept it, and C. offers to accept it for the honor of the drawer, the drawee [holder] need not acquiese, but may protest. So it is said by *Beawes, pl.* 37, that when a bill is accepted *supra protest*, and the holder is not satisfied therewith, but by the notary-public and witnesses demands a simple acceptance, and upon refusal makes a protest; the acceptor if he continues resolved not to accept, simply and freely, should renounce the acceptance he has made, and insist that it be so inserted in the protest, and be considered null and void.

It is said that no one should accept a bill *supra protest* for

the drawer's honor, till he has first learned the reasons from the intended acceptor for his suffering it to be protested, but that if the acceptance be in honor of an indorser, such an inquiry is needless. *Beawes, pl.* 45.

The holder must have the bill protested for non-acceptance. *Mar.* 88. 125, 6, 7., or for better security, *Ex parte Wackerbarth*, 5 *Ves.* 574. *post*, before taking an acceptance *supra protest.*

Acceptance supra protest—mode of.] The mode of accepting a bill *supra protest* is said to be as follows. The acceptor must personally appear before a notary public with witnesses, whether the same that protested the bill or note is of no importance, and declare that he doth accept such protested bill in honor of the drawer or indorser, &c. and that he will satisfy the same at the appointed time, and then he must subscribe the bill with his own hand thus, *Accepted supra protest in honor of J. B., &c. Beawes, pl.* 38.

Acceptance supra protest—liability of the acceptor.] It is said by *Beawes, pl.* 34, that an acceptance *supra protest* obliges the acceptor as absolutely to the payment as if no protest had intervened, it being indifferent to the possessor of a bill for whose account the same is accepted, and he has his redress and remedy as sufficiently as ever against all the indorsers and drawers, if the payment be not punctually made by the acceptor at the time of its falling due. So it is said by the same writer *pl.* 43, that he that accepts a bill *supra protest*, puts himself absolutely in the stead of the first designed acceptor, and is obliged to make the payment without any exception, and the possessor has the same right in law against such an acceptor, as he would have had against the first intended one, if he had accepted. The rule appears to be the same in most of the codes of foreign law. *See the authorities cited* 1 *Manning and Ryl.* 398. It has, however, been decided that an acceptance for honor is not absolute, but conditional, and is only an engagement to pay, in case, upon presentment to the drawee, he shall refuse to pay. A bill drawn at Hamburgh, payable 130 days after date, was presented to the drawees for acceptance, who refused, and the bill was thereupon protested, and the defendants accepted it *supra protest* for the honor of the first indorsers. When due it was not presented to the drawees for payment, nor was it proved to have been protested for non-payment. A verdict having been found for the plaintiffs, subject to the opinion of the court of K. B. on a case, that court held that the plaintiffs were not entitled to recover. *Per Lord Ellenborough*, " The reason of the thing, as well as the strict law of the case, seem to render a second resort to the drawee

proper when the unaccepted bill still remains with the holder, for effects often reach the drawee who has refused acceptance in the first instance, out of which the bill may, and would be satisfied if presented to him again when the period of payment had arrived. And the drawer is entitled to the chance of benefit to arise from such second demand, or at any rate to the benefit of that evidence which the protest affords, that the demand has been made duly without effect, as far as such evidence may be available to him for purposes of ulterior resort." *Hoare v. Cazenove*, 16 *East*, 391. The authority of the foregoing case was recognised in the following; In an action against the acceptor for honor of a bill payable thirty days after sight, the declaration contained no averment of presentment for payment to the drawee, on the bill becoming due. The court, on the authority of *Hoare v. Cazenove*, arrested the judgment for the plaintiffs. *Per Lord Tenterden*, "The result, as it seems to me, of the decision to which I have alluded, is that an acceptance for honor is to be considered, not as absolutely such, but in the nature of a conditional acceptance. It is equivalent to saying to the holder of the bill, don't return it, and when the time arrives at which it ought to be paid, if it be not paid by the party on whom it was originally drawn, come to me and you shall have the money. This appears to me to be a very sensible interpretation of the nature of acceptances for honor, where the party says nothing upon the subject. In an action by the holder against the drawer of the bill, to be sure he has a right to say, if you keep it till the time has run out, you ought to have presented it to the person on whom I drew it, and have seen whether on the presentment he would pay, whereas, you forbore to do so, and have relied on an acceptance by some person for my honor, made without my authority. We think that we are bound by authority, and I am inclied to say by reason, to confirm the decision in *Hoare v. Cazenove*." *Williams v. Germaine*, 7 *B. & C.* 468, 1 *Mann. & Ry.* 403. *S. C.*

Remedy of the acceptor supra protest.] Any one accepting a bill *supra protest* for the honor of the drawers or indorsers, though it be done without their order or knowledge, has yet his remedy against the person for whose honor he accepted, who is obliged to indemnify him as if he had acted entirely by his directions. *Beawes, pl.* 47. He that accepts a bill for the honor of the drawer, has no remedy against any of the indorsers, because he obliges himself only for the drawer; and he who accepts for the honor of the indorser, has no remedy against any one subsequent to him for whose honor he accepted; but the latter, and all before him, the drawers included, are obliged to make the acceptor satisfaction. *Id.* 49. So where a bill accepted by the drawee, is protested for better

security, and accepted *supra protest* for the honor of the drawer, the acceptor *supra protest* has a right to sue the former acceptor. *Ex parte Wackerbarth*, 5 *Ves.* 574. *Ex parte Lambert*, 13 *Ves.* 180.

Cancellation of acceptance.] Although it was otherwise ruled by Lord Ellenborough, *Thornton v. Dick*, 4 *Esp.* 270, yet it is now determined, that the drawee of a bill who accepts it, but before the redelivery to the holder changes his mind and cancels the acceptance, is not liable to be sued as acceptor. *Per Bayley, J.* "The question is, when the drawee comes under an engagement, whether by the act of writing something on the bill, or by the act of communicating what has been written to the holder; and I have no difficulty in saying, from principles of common sense, that it is not the mere act of writing on the bill, but the making a communication of what is so written, that binds the acceptor, for the making a communication is a pledge from him to the party, and enables the holder to act upon it." *Cox v. Troy*, 5 *B. & A.* 474. 1 *D. & R.* 38. *S. C.* A third person who cancels an acceptance by mistake, having no authority so to do, shall not be held thereby to make void the bills, but shall be at liberty to correct that mistake in furtherance of the rights of the parties to the bill, as in the following case. A bill having been accepted payable at Ladbrooke's with a direction in writing on it, "in case of need, to apply at Boldero's," and having been dishonored when due at Ladbrooke's, and thereupon brought to Boldero, who thinking that it had been made payable at his house, under that mistake cancelled the acceptance, but presently observing the mistake, wrote under it *cancelled by mistake*, and signed his initials to it, yet nevertheless paid the bill for the honor of the plaintiffs, whose indorsement was on it; it was held that the plaintiffs, on proof of such cancellation by mistake, might recover on the bill against prior indorsers. *Raper v. Birkbeck*, 15 *East*, 17.

A check drawn upon the defendants, bankers in the city, by one of their customers, was passed through the clearing-house, and taken from thence to the defendants' shop by one of their clerks, and then another clerk drew his pen through the name of the drawer, as usual when a check is introduced to be paid, but it being soon afterwards known that a check to a very large amount, drawn by a third person and paid into the defendants' house by the drawee of this check was dishonored, the same clerk wrote under the name the words "cancelled by mistake" and signed his initials, and in that state the check was before five o'clock returned to the bankers to whom the plaintiff had delivered it, and was received back by them. It was contended for the plaintiff, that this cancellation amounted to an acceptance of the check as an acknowledgment

that the defendants had money in their hands to pay it, and that the acceptance was irrevocable. It was proved, however, to be usual to return and take back before five o'clock checks passing through the clearing-house, and thus cancelled, if the words "cancelled by mistake" were written on them, as in the present case, and the plaintiff was nonsuited. *Fernandez v. Glynn, cited* 3 *B. & C.* 438. 1 *Campb.* 426. (*n.*) *S. C.*

CHAPTER IX.

OF NOTICE OF DISHONOR.

When necessary in general.
Form of the notice.
By whom.
To whom.
In general.
Person guaranteeing the payment of a bill.
Person delivering over a bill without indorsement and not guaranteeing it.
Mode in which it should be given.
Within what time.
Within what hours.
Protest of foreign bills.
Within what time.
Protest of inland bills.
Protest for better security.
Excused.
By part payment.
By promise to pay.
Only where the party knows of the laches.
In case the drawer has no effects in the hands of the drawee.
Not excused where the drawer has effects in the hands of the drawee at the time of drawing, or at any time before presentment.
Though to less amount than the bill.
Not excused where, though there are no actual effects, there is a reasonable expectation of the bill being honored.
Not excused where, though the drawer has no effects, he would have a remedy over.

Not excused in an action against the indorser, because the drawer has no effects in the hands of the drawee.

Not excused by the insolvency or bankruptcy of the drawer or other party.

Whether excused in case of the known insolvency of the maker of a note.

Not excused by an agreement not appearing on the face of the note that it shall not be enforced.

Whether excused in case of accident.

By ignorance of the party's residence.

Protest—when excused.

When necessary in general.] It has been stated, (*ante, p.* 141.) that it is not necessary to present any bill for acceptance, except such as are made payable after sight, but if a bill be presented for acceptance and refused, it is necessary to give notice of the refusal to the drawer or indorsers, otherwise they will be discharged. *Goodall v. Dolley*, 1 *T. R.* 712. *Roscow v. Hardy*, 12 *East*, 434. *Orr v. Maginnis*, 7 *East*, 358. Yet if, after such neglect, but before the bill becomes due, the holder indorses it for a valuable consideration, the indorsee without notice of the laches, as already stated, may recover on the bill. *O'Keefe v. Dunn*, 6 *Taunt.* 305. 1 *Marsh.* 613. 5 *M. & S.* 282. *S. C. ante, p.* 131. Where a conditional acceptance or an acceptance varying from the terms of the bill has been taken by the holder, he should, as already stated, give notice to the other parties that he has taken such acceptance, *ante, p.* 187; and he should not in such case give a general notice of non-acceptance, which might preclude him from afterwards insisting upon the conditional or varying acceptance. *Ante, p.* 188. A neglect to give notice, upon the refusal of anything more than a conditional acceptance, is done away by the completion of those conditions, before the bill becomes payable, and a neglect upon the refusal of anything more than a partial acceptance, discharges the persons intitled to it only from their responsibility as to the payment of the residue. *Bayley*, 206. Though it was formerly held, that a neglect to give notice did not furnish a defence, unless the defendant could prove that he was prejudiced thereby; *Meggadon v. Holt*, 12 *Mod.* 15. 1 *Show.* 317; yet it has been since clearly settled, not only that it does not lie upon the defendant to shew that he has been prejudiced by the want of notice, (*see Bickerdike v. Bollman*, 1 *T. R.* 409,) but, that the not being prejudiced is no answer to the defence of laches, provided the drawer had effects in the hands of the drawee. *See*

Dennis v. Morris, 3 *Esp.* 158. *Peach v. Burgess, cited* 1 *T. R.* 407.

Where the acceptor of a bill directed the indorsee (who was the banker both of the acceptor and drawer) to send to the house where it was payable and to forbid its payment, it was held that the indorsee was not bound to give notice of those directions to the drawer. *Cross v. Smith*, 1 *M. & S.* 545.

Where notice of dishonor has been given, a second notice is not requisite, though the party who gave the notice says at the time, that he will retain the bill for a certain time, having reason to believe that a friend of the acceptor will advance him the money. *Forster v. Jurdison*, 16 *East*, 105. So where notice of non-acceptance has been given, and the bill is again presented for payment and refused, it is not necessary to give notice of such latter refusal. *Price v. Dardell, cor. Lord Kenyon*, 1794. *Chitty*, 300. 5*th Ed.* 232. 7*th Ed. De la Torre v. Barclay*, 1 *Stark.* 7.

Where the drawer and acceptor of a bill are fictitious persons, a party who has indorsed the bill for accommodation, but without fraud, is intitled to notice, for he only places himself in the common situation of an indorser. *Leach v. Hewitt*, 4 *Taunt.* 731.

With regard to want of notice where a bill is refused acceptance and is afterwards accepted, *see Note* 41.

Form of the notice.] It is not necessary that a notice of dishonor should be in writing. *Goldsmith v. Bland, Bayley*, 224. *Cross v. Smith*, 1 *M. & S.* 545. But the notice must apprise the party of the fact of dishonor, and not contain a demand of payment only. Thus, where it was in the following terms; "I am desired to apply to you for the payment of the sum of 150*l.*, due to myself on a draft drawn by Mr. C. on Mr. C., which I hope you will on receipt discharge, to prevent the necessity of law proceedings, which otherwise will immediately take place," it was held not to be sufficient. *Per Abbott C. J.* "There is no precise form of words necessary in giving notice of the dishonor of a bill of exchange, but the language used must be such as to convey notice to the party what the bill is, and that payment of it has been refused by the acceptor. The letter did not convey to the defendant any such notice, it does not even say that the bill was ever accepted." *Hartley v. Case*, 4 *B. & C.* 339. In an action against the indorser of a bill, the notice was as follows: "I give you notice that a bill for, &c. *drawn* by you, &c." and Abbott C. J. thinking that this variance was calculated to mislead, held the notice to be bad and non-suited the plaintiff. *Beauchamp v. Cash, D. & R. N. P. C.* 3. The following letter from the holder to the payee of a note was held to be sufficient notice. "Mr. Ellis (the maker) is unable to pay the note for a few days; he says he shall be

ready in a week, which will be in time for us —— only form to acquaint you." *Margesson v. Goble*, 2 *Chitty*, 364. (*Note* 42).

By whom.] It was formerly held that notice of dishonor, to be available, must come from the holder of the bill. *Tindal v. Brown*, 1 *T. R.* 167. Where it was objected, that notice to the drawer had not been given by the holder, but by one of the indorsers, the Lord Chancellor said, "The settled doctrine is, according to the language of Mr. Justice Buller in *Tindal v. Brown*, and there is great reason for it; for the ground of discharging the drawer, is that the holder gives credit to some person liable, as between him and the drawer. Notice from any other person that the bill is not paid, is not notice that the holder does not give credit to a third person. The doctrine has been acted upon very often since." *Ex parte Barclay*, 7 *Ves.* 597. So a previous knowledge that a bill will be dishonored, is not equivalent to notice of the dishonor; *Nicholson v. Gouthit*, 2 *H. Bl.* 162; for, as it was said by Ashurst J. in *Tindal v. Brown*, 1 *T. R.* 169., "*notice* means something more than *knowledge*, because it is competent to the holder to give credit to the maker." Thus, when a few days before a bill became due, the acceptor told the drawer that he should not be able to take it up, and gave the drawer 5*l.* 5*s.*, as part of the amount, who promised to take it up; in an action by the indorsee against the drawer, no notice of dishonor was proved, and Lord Ellenborough was of opinion, that the defendant was discharged upon the bill for want of due notice, but that the plaintiff was entitled to recover the 5*l.* 5*s.* as money had and received to his use. *Baker v. Birch*, 3 *Campb.* 107.

In an action against the indorser of a bill, a witness of the name of Cutler was called, who stated that he had been employed by the original parties to get the bill discounted, that when it became due it was in the hands of one Abbott, to whom the plaintiff had indorsed it; that the day after, the witness met the defendant and told him that it had not been paid. *Per Lord Ellenborough*, "If you could make Cutler the agent of the holder of the bill, the notice would be sufficient, but in reality he was a mere stranger. The bill when dishonored, lay at the banker's of Abbott, with whom Cutler had no sort of connection. But the notice must come from the person who can give the drawer or indorser his immediate remedy upon the bill, otherwise it is merely an historical fact. In this case, Cutler was not possessed of the bill, and had no control over it. The defendant therefore is not proved to have had any legal notice of the dishonor of the bill, and is discharged from the liability he contracted by indorsing it." *Stewart v. Kennett*, 2 *Campb.* 177.

But, in many later cases it has been held, that it is not

necessary that the notice should proceed from the holder of the bill, it is sufficient if it come from some person intitled to call for payment or reimbursement. *Bayley*, 207. Thus, in an action against the drawer of the bill, it being proved that a message had been left at the defendant's house *by the acceptor*, stating that the bill had been dishonored, Lord Kenyon said, that it made no difference who apprised the drawer, since the object of the notice was, that the drawer might have recourse to the acceptor. *Shaw v. Croft*, 1798. *Chitty*, 294. *5th Ed.* 227. *7th Ed.* (*Note* 43.) Where the plaintiff, the holder of a bill, gave due notice of the dishonor to an indorser, who gave due notice to the drawer, the defendant, it was objected that the plaintiff had given no notice to the defendant. *Per Lawrence J.* "I am of opinion, that the drawer or indorser is liable to all subsequent indorsers, if he had due notice of the dishonor of the bill from any person who is a party to it. Such a notice must serve all the purposes for which the giving of notice is required. The drawer or indorser is authoritatively informed, that the bill is dishonored; he is enabled to take it up if he pleases, and he may immediately proceed against the acceptor or prior indorsers." *Jameson v. Swinton*, 2 *Campb.* 373. So, where in an action against the drawer, it appeared that notice had been given to an indorser, and by him on the following day to the defendant, Lord Ellenborough was of opinion, that notice from any person who was a party to the bill was sufficient. *Wilson v. Swabey*, 1 *Stark.* 34; *see also Bray v. Hadwen*, 5 *M. & S.* 68. So also, where in a similar action it appeared, that on the day on which the bill was dishonored, the acceptor wrote a letter to the drawer, stating that he had not been able to pay the bill, and that it was then in the hands of the plaintiffs, Lord Ellenborough held the notice from the acceptor sufficient. *Rosher v. Kieran*, 4 *Campb.* 87. Upon this case it has been observed, that it may perhaps have been decided on the ground, that the acceptor wrote for the plaintiff and as his agent. *Bayley*, 208. It is prudent in each party who receives a notice, to give immediate notice to those parties against whom he may have right to claim, for the holder may have omitted notice to some of them, or there may be difficulties in proving such notice. *Ib.* 209.

To whom, in general.] Where the holder of a bill is desirous of suing all the parties to it, he should give notice to all, for if he only gives notice to his immediate indorser, &c. it is possible, that such notice may not be regularly transmitted to the prior parties, who may consequently be discharged. But, if he give notice to his immediate indorser, and he in due time to *his* indorser, and so on to the drawer, the holder may sue all or any of such parties, and it is no objection in such case, that there was no notice immediately from the plaintiff to

the defendant. *Bayley*, 209; If when a bill becomes due and is dishonored, the drawer or indorser is dead, notice of the dishonor ought to be given to his personal representative. *See ante, p.* 147, (*Note* 44.) If he has become bankrupt, notice given to him before the appointment of assignees will be good, for the bankrupt represents his estate until the assignees are chosen. *Ex parte Moline*, 19 *Ves.* 216; *and see Rhode v. Proctor*, 4 *B. & C.* 517; *post.* Where the indorser of a dishonored bill was abroad in Jamaica, but had a house in England, and notice was sent to his house and the bill was shewn to his wife, who was informed of the non-payment, Lord Kenyon held it to be sufficient. *Cromwell v. Hynson*, 2 *Esp.* 511; *and see Rhode v. Proctor*, 4 *B. & C.* 523. The cases in which it has been held necessary to give notice to a person who has guaranteed the payment of a bill, will be stated hereafter.

It was formerly doubted whether before an indorser could be sued, it was not necessary to make a demand upon the drawer; but it has since been held, that neither in case of a foreign bill, *Bromley v. Frazier*, 1 *Stra.* 441, nor of an inland bill, *Heylin v. Adamson*, 2 *Burr.* 669, nor of a check, *Per Ld. Ellenborough, Rickford v. Ridge*, 2 *Campb.* 539, is the holder compelled to make a demand upon the drawer or indorser, before he sues the indorser.

Notice to one partner is notice to all. (*Note* 45.) The defendants were sued as drawers of a bill, purporting to be drawn by Wood, as the agent of George, James, and John Parker, upon John Parker. There was no proof that Wood had authority from the defendants to draw the bill, but a witness swore that he, as the agent of John Parker, the drawee, and one of the defendants, had accepted it on his account. Lord Ellenborough held, that the bill having been accepted by order of one of the defendants, was sufficient evidence of its having been regularly drawn, and further that the acceptor being likewise a drawer, there would be no occasion for the plaintiff to prove that the defendants had received express notice of the dishonor of the bill, as this must necessarily have been known by one of them, and the knowledge of one was the knowledge of all. *Porthouse v. Parker*, 1 *Campb.* 82; *and see Alderson v. Pope, Id.* 404. *Bignold v. Waterhouse*, 1 *M. & S.* 259. (*Note* 46.) Notice to the attorney of the party is not sufficient. *Crosse v Smith*, 1 *M. & S.* 554. A person entitled to notice, may dispense with it by undertaking to make enquiries himself as to the bill being paid. *Phipson v. Kneller*, 4 *Campb.* 285. *stated post.*

Where a bill is accepted specially at a banker's, or other place, and is there dishonored, it is not necessary to give notice of such dishonor to the acceptor. In an action against the acceptor of a bill, accepted payable at Coutts & Co. no

proof was given of any notice of dishonor, to the defendant. Bayley, J. was of opinion, that the defendant was not entitled to notice, and the plaintiff had a verdict, and, on motion to enter a nonsuit, *Per Abbott, C. J.* "It may be very doubtful whether any notice at all be necessary under any circumstances; for here the acceptor, having appointed a special place for payment, may perhaps be considered as having made Coutts & Co. his agents, for the purpose of paying the bill, and then their refusal to pay may be considered as a refusal by him, in which case no notice could be necessary." *Smith v. Thatcher*, 4 *B. & A.* 200. The defendant had accepted a bill, payable at Lubbock's, which was there dishonored when due. At the trial, Abbott, C. J. was inclined to think, that since the decision in *Rowe v. Young*, (*ante*, *p.* 184.) the plaintiff was bound to prove that he had given notice of non-payment to the defendant, and the cause being undefended, he nonsuited the plaintiff, with liberty for him to move to enter a verdict. On cause shewn, the court held such notice to be unnecessary. *Per Bayley, J.* "An acceptance, payable at a banker's, is substantially a statement by the acceptor, that that is the place at which payment will be made by himself, his banker, or his agent; and it is the duty of the acceptor to take care that such payment is duly made. He has an opportunity, from time to time, of calling on the bankers for his account, and he may give them directions to send all bills to him, as soon as they are paid, and then, by looking at such accounts, he will know whether such payments have been made or not." *Treacher v. Hinton*, 4 *B. & A.* 413. So, upon a note made payable at a banker's, notice of dishonor to the maker is unnecessary. *Pearse v. Pemberthy*, 3 *Campb.* 261.

To whom — person guaranteeing the payment of a bill.] There appears to be no general rule, that the party who guarantees the payment of a bill, shall be discharged from his engagement, in case the holder neglect to give him notice of its dishonor. The cases which have occurred on this subject, have been determined, each on its own peculiar circumstances, and the principle of those decisions seems to be, that where the guaranteeing party has been prejudiced by the neglect, he is discharged, but that where no such prejudice could arise from the neglect, he is not discharged. The defendants wishing to purchase goods from one Martin, gave him the plaintiffs' guarantee for the amount, and a bill for the value of the goods accepted by themselves. Before the bill became due, the defendants became bankrupts, and the plaintiffs being obliged to pay on their guarantee, brought their action to be reimbursed. As a defence, it was insisted, that the bill had not been presented to the acceptor when due, without which Martin could not have

recovered against the plaintiffs, on their guarantee; but the court held that such presentment was not necessary. *Per Lord Ellenborough.* "The same strictness of proof is not necessary to charge the guarantees, as would have been necessary to support the bill itself, where, by the law-merchant, a demand upon, and refusal by, the acceptors must have been proved, in order to charge any other party upon the bill, and this, notwithstanding the bankruptcy of the acceptors, as was recognised in *Russell v. Langstaffe, Dougl.* 515. But this is not necessary to charge guarantees, who insure, as it were, the solvency of their principals; and, therefore, if the latter become bankrupt, and notoriously insolvent, it is the same as if they were dead, and it is nugatory to go through the ceremony of making a demand upon them." *Warrington v. Furbor,* 8 *East,* 242. The defendants guaranteed the payment of a bill, drawn by Davenport and Finney, on G. Houghton. On the 14th of July, 1808, the bill became due, but was not presented. No notice of dishonor was given to the defendants. In February, 1809, Davenport and Finney became insolvent, and, in July, 1809, Houghton was declared a bankrupt. No application was made to the defendants, till after both those dates. A verdict was found for the plaintiffs, which the court of C. P. set aside, and ordered a nonsuit to be entered, *Per Mansfield, C. J.* "In *Warrington v. Furbor, (supra),* Lord Ellenborough expressed the opinion of the court, that although the insolvency of the parties to a bill would not, in general, dispense with the necessity of presenting it for payment, yet where it was obvious that it could not avail, the same strictness of proof was not necessary to charge a guarantee, and, therefore, if the parties became bankrupt, and notoriously insolvent, it was the same as if they were dead. Now, this case is decided on the ground, that the pursuing the course of applying to the acceptor, in that case, as here, to the acceptor and drawer, would have been of no effect, because there the bankruptcy had already happened before the bill became due. Here the insolvency did not occur till long after the bill became due, and Houghton's bankruptcy was long after that. For any thing, then, that appears, if this gentleman had demanded the money, either of the acceptor or drawer, the bill might have been paid. That, too, was a guarantee of payment of the price of goods; this is for a bill, and the contract necessarily implies, that the defendants will pay it, if the plaintiffs do not, being called on in a proper manner; and, therefore, though that case has relaxed the strictness of the proof of presentment and notice, and seems to decide, that it is not necessary to pursue the same strictness in order to charge the guarantee, as to charge the drawer of a bill, yet it may still be inferred from it, that if the necessary steps are not taken to obtain payment from the parties who are

liable on the bill, and solvent, the guarantee must be discharged." *Philips v. Astling*, 2 *Taunt.* 206. The condition of a bond, after reciting, that defendant and J. S. had delivered and indorsed to the plaintiff a bill of exchange, drawn by J. S. and accepted by A. B., was, that defendant and J. S. or either of them, their heirs, &c. should pay, or cause to be paid, to the plaintiff the sum secured by the bill, within one month after it should become due and payable, in case it should not be then paid by the acceptor, according to the tenor of the said bill, together with interest, &c. The defendant pleaded, that the bill when due had not been presented for payment to the acceptor, and that due notice of its dishonor had not been given to the defendant and J. S. or to either of them. The court held the plea bad. *Per Abbott, C. J.* "It is contended by the defendant's plea, that we are to engraft on this bond those limitations which the law imposes upon the holders of bills of exchange, viz. a due presentment to the acceptor, and a notice of dishonor to the drawer and indorser. I am of opinion that we ought not to do so. I do not rely on the case of *Warrington v. Furbor*, because that case has been broken in upon by the case of *Phillips v. Astling*. But, there is a main distinction between those cases and the present, for in both of them the guarantees were given by persons not interested as parties to the original instrument. But here the bond is given by J. S. and the defendant, who were both parties to the bill. Now, in that character, if no bond had been given, it is clear that they would have been liable in case the formalities stated in the pleas had been complied with, and, if the only object of the bond had been, to give the plaintiff a security of a higher nature, and to make the party liable in case these formalities had been complied with, I think we should have found it so expressed in the condition, and not finding that, I therefore conclude, that the parties meant to engage to pay the bill, at all events, as sureties for the acceptor, in case he did not pay it." *Murray v. King*, 5 *B. & A.* 165. The plaintiffs having sold wools to C. & P. for which they accepted a bill at eight months, the defendants agreed to guarantee half the amount. The bill became due on 29th October, 1818, but was not presented to C. & P. nor was any notice of non-payment given to the defendant. About the 4th September, in the same year, C. & P. had become insolvent. It did not appear that the defendant had sustained any damage by want of presentment and notice. On the 22d of that month, the plaintiffs wrote to the defendant, requesting him to accept a bill at one month, for the sum guaranteed by him. A verdict having been found for the plaintiffs, the court refused to set it aside, saying, that the case of *Phillips v. Astling* differed very materially from this. That the insolvency, in that case, did not happen till after the

bill became due; but, in the present instance, so early as the 22d September, the defendant had notice that C. & P. were insolvent, and that the plaintiff would look to him for payment. *Holbrow v. Wilkins*, 1 *B. & C.* 10.

To whom—person delivering over a bill without indorsement, and not guaranteeing it.] In general, where a party delivers over a bill without indorsing it, and without guaranteeing the payment, he is not entitled to notice of its dishonor, and may be sued upon the original consideration, without the proof of any such notice. Thus where the defendant being indebted to the plaintiffs for goods sold, and C. being indebted to the defendant, the plaintiffs with the consent of the defendant, drew a bill on C. at two months, which C. accepted, but afterwards dishonored, it was held that the defendant was not entitled to notice of the dishonor, his name not being on the bill, and that the plaintiffs were entitled to recover on the original consideration. *Swinyard v. Bowes*, 5 *M. & S.* 62. Irving & Co., resident in America, employed Van Wart, resident at Birmingham, to purchase and ship goods for them. On account of such purchases they sent to Van Wart, a bill drawn by Cranston & Co., upon Greg and Lyndsay in London, but did not indorse it. Van Wart employed his bankers to present the bill for acceptance. G. and L. refused to accept, but the bankers did not give notice until the day of payment, when it was again dishonored. Before the bill arrived in this country, Cranston & Co. became bankrupt, and had not, either when the bill was drawn or when it became due, any funds in the hands of the drawees. In an action by Van Wart against the bankers, for neglecting to give him notice of the non-acceptance of the bill, it was held that inasmuch as Irving & Co. not having indorsed the bill, were not entitled to notice of the dishonor, and still remained liable to Van Wart for the price of the goods furnished to them, and as Cranston & Co. were not entitled to notice, as they had no funds in the hands of G. and L., Van Wart could not recover the whole amount of the bill, but such damages only as he had sustained in consequence of his having been delayed in the pursuit of his remedy against the drawer. *Per Abbott, C. J.* "We are of opinion that the plaintiff has not, as between him and Irving & Co., made the bill his own; that he might, notwithstanding the want of notice of the non-acceptance, have recovered from them the amount of the bill in an action for money paid; or if he had notice of the dishonor before he had bought and sent the goods which they had ordered him to buy, he might have returned the bill, and have abstained from ordering or buying the goods. It will have been observed that Irving & Co. sent the bill to the plaintiff without their indorsement, and payable to his own order. The counsel for the plaintiff

was under the necessity of arguing this case, as if he were arguing for Irving & Co. in an action brought against them by the plaintiff; and it was contended that Irving & Co. were entitled to notice of the non-acceptance in this case, as they would have been by the law-merchant, in the case of a bill indorsed by them to the plaintiff. And the case of *Swinyard* and others *v. Bowes*, (*supra*) is an authority the other way. If a person deliver a bill to another without indorsing his own name upon it, he does not subject himself to the obligations of the law-merchant; he cannot be sued on the bill, either by the person to whom he delivers it, or by any other. And as he does not subject himself to the obligations, we think he is not entitled to the advantages. If the holder of a bill sell it without his own indorsement, he is, generally speaking, liable to no action in respect of the bill. If he deliver it without his indorsement upon any other consideration, antecedent or concomitant, the nature of the transaction, and all circumstances regarding the bill, must be enquired into, in order to ascertain whether he is subject to any responsibility. If the bill be delivered, and received as an absolute discharge, he will not be liable, if otherwise he may be. The mere fact of receiving such a bill does not shew it was received in discharge, *Bishop v. Rowe*, and *Swinyard* and others *v. Bowes*, before mentioned." *Van Wart v. Woolley*, 3 *B. & C.* 439.

Mode in which it should be given.] Sending a verbal notice to a merchant's counting-house in the ordinary hours of business is sufficient, though there is no one there. (*Note* 47.) The plaintiffs sued the defendants as indorsers of two foreign bills, and to prove notice, shewed that they sent a clerk to the defendant's counting-house near the Exchange between four and five o'clock in the afternoon; nobody was in the counting-house; the clerk saw a servant girl at the house, who said that nobody was in the way, and he returned, having left no message with her. Lord Eldon told the jury that if they thought the defendants ought to have had somebody in the counting-house at the time, he was of opinion that the plaintiffs had done all that was necessary by sending their clerk; that the notice was in law sufficient if the time was regular, whether the defendants were solvent at the time or not. The jury thought that the defendants ought to have had somebody in the counting-house at the time, and that the plaintiffs had done all that was necessary. *Goldsmith v. Bland*, 1 *March*, 1800, *Bayley*, 224. The cashier of the holder of a bill took it about ten o'clock in the morning to the counting-house of the drawer, to give notice of the dishonor. The outer door of the counting-house was open, but the inner door was locked. The cashier knocked, and made noise enough to be heard if any one had been within; he waited two or three minutes, but nobody coming, he went

away and returned to the holder's counting-house. On his return there he found the drawer's attorney there, and informed him what he had done. The cashier had also seen one of the drawer's clerks on that morning before he had orders to take the bill to their counting-house, but though he then knew of the bill being returned, he did not inform the clerk of that fact. On the next morning about half past ten, the cashier went to the counting-house of the drawers for the same purpose without effect, and on his return he again saw the attorney of the drawers, and informed him of what he had done. At neither time did the cashier leave any written notice of the dishonor of the bill. The notice was held sufficient. *Per Ld. Ellenborough,* "The period from ten to eleven was a time during which a merchant's counting-house ought to be open, and some person expected to be met with there. The counting-house is a place where all appointments respecting the joint business, and all notices should be addressed, and it is the duty of the merchant to take care that a proper person be in attendance. It has however been argued that notice in writing left at the counting-house, or put into the post, was necessary, but the law does not require it, and with whom was it to be left? Putting a letter into the post is only one mode of giving notice, but where both parties are residing in the same post town, sending a clerk is a more regular and less exceptionable mode." *Crosse v. Smith,* 1 *M. & S.* 545. *And see Bancroft v. Hall, Holt,* 476. *post p.* 207.

Putting a letter properly addressed, and containing the notice of dishonor, into the post office, is sufficient evidence of notice. Where there was no other evidence than this, the court of C. P. held it sufficient. *Saunderson v. Judge,* 2 *H. Bl.* 509. So in the case of foreign bills, notice by the post, either to or from England, will be sufficient. Where the question was whether a bill drawn on certain persons at Genoa had been duly presented and due notice of dishonor given, it appeared that the bill had been put into the post office at London the third day after it had been received, which was the first Italian post day. It was further proved that from the disturbed state of Italy the regular post had been interrupted, and the bill had not arrived at Genoa till a month after it became due; that it was immediately presented for acceptance, which being refused, it was protested and the protest sent off immediately by the post to England. Lord Kenyon said, that he was of opinion that if the plaintiffs had sent the bill by the ordinary course of the post, they had done all that they were called upon to do; that they could not foresee that the post would be interrupted, and it could not be expected that they should send the bill by a special messenger or any extraordinary mode of conveyance. *Kufh v. Weston,* 3 *Esp.* 54. So where certain bills were dishonored in India, it was held suf-

ficient for the party there to send notice by the first regular ship going to England, and that it was not incumbent on him to send it by a foreign ship not bound to England. *Muilman v. D'Eguino*, 2 *H. Bl.* 565. *ante*, p. 142. *And see Darbishire v. Parker*, 6 *East*, 3.

In order to render a notice of dishonor conveyed by the post sufficient, it must appear that the letter containing it was properly directed. Where in an action by the indorsee against the indorser, the letter was directed to "*Mr. Haynes, Bristol*," Abbott, C. J. said, "This is not sufficient proof of notice. Where a letter, fully and particularly directed to a person at his usual place of residence, is proved to have been put into the post office, this is equivalent to a proof of delivery into the hands of that person; because it is a safe and reasonable presumption that it reaches its destination; but where a letter is addressed generally to A. B. at a large town, as in the present case, it is not to be absolutely presumed from the fact of its having been put into the post office, that it was ever received by the party for whom it was intended. The name may be unknown at the post office, or if the name be known, there may be several persons to whom so general an address would apply. It is therefore, always necessary in the latter case to give some further evidence to show that the letter did in fact come to the hands of the person for whom it was intended." *Walter v. Haynes, Ry. & Moo.* 149. But where the bill as drawn was dated "Manchester," and the letter containing the notice of dishonor *to the drawer* was directed "Mr. Moore, Manchester," Abbott, C. J. said "I am of opinion that this was sufficient notice of the dishonor of the bill. If the drawer of a bill of exchange dates his bill 'London,' I think a notice of dishonor by letter addressed to him *London*, will be sufficient." *Mann v. Moors, Ry. & Moo.* 249.

Where, to prove the sending of a notice by post, the plaintiff's clerk was called, who stated that a letter containing the notice was sent by post on a Tuesday morning, but he had no recollection whether it was put in by himself or another clerk, it was held that this was not sufficient evidence of the letter having been put into the post. *Hawkes v. Salter*, 4 *Bingh.* 715. *and see post, Chapter* XII.

It is sufficient to send the notice by the two-penny post within the limits of that post; *Scott v. Lifford*, 1 *Campb.* 246. 9 *East*, 347. *S. C. Smith v. Mullet*, 2 *Campb.* 208; provided that it be put in at such a time as that, according to the course of that post, it will be delivered on the day on which the notice is due. *Hilton v. Fairclough*, 2 *Campb.* 633. The letter ought not to be delivered to a bellman in the street, but either at the post office itself or at one of the authorised receiving-houses. *Hawkins v. Rutt*, *Peake*, 186.

Although there is a regular post, the party may adopt another

channel of conveyance. The plaintiff residing at Manchester received notice of dishonor on 24th May. On that day he sent a letter by a private hand to his agent at Liverpool, directing him to give the drawer notice. On the 25th in the afternoon, the agent received the letter, and went about six or seven in the evening to the counting house of Hall, but after knocking at the door and ringing the bell, no one came. The merchants' counting houses at Liverpool do not shut up till eight or nine. The 26th was Sunday, and notice was not in fact given till the morning of the 27th. *Per Bayley, J.* "Notice must be given in time, but all a man's other business is not to be suspended for the sake of giving the most expeditious notice. He is not bound to write by post as the earliest conveyance, or to send a letter by the very first channel which offers. He may write to a friend and send by a private conveyance. Here the notice reaches Liverpool on the 26th. No expedition could have brought it earlier. Between six and seven in the evening of that day, the witness goes to the defendant's counting house and it is shut up. A merchant's counting house or residence of trade is not like a banker's shop, which closes universally at a known hour. It was the defendant's fault that he did not receive notice on the 25th, which he might have done if he had kept his counting house open till eight or nine, which are the customary hours of closing them at Liverpool." *Bancroft v. Hall, Holt, N. P. C.* 476.

Where the holder of a bill sent a special messenger with the notice, and thereby incurred an expence of 2*l.* 12*s.* 9*d.* and it appeared that the letter possibly would not otherwise have reached the party for a fortnight, as he lived out of the usual course of the post, it was left to the jury to say whether the sending by a special messenger was done wantonly or not, and the jury finding for the full amount of the expenses, the court refused to disturb the verdict. *Per Lawrence J.* "In some parts of Yorkshire, as it appears in this case, where the manufacturers live at a distance from the post towns, the letters may lie a long time before they are called for, and it may be necessary to send notice by a special messenger." *Per Ld. Ellenborough,* "It was rightly left to the jury, if it was left to them to say whether the special messenger was necessary, and also whether the charge was reasonable." *Pearson v. Crallan,* 2 *Smith,* 404.

Within what time.] Whether a notice is good or not appears to be a mixed question of law and fact. *See ante, p.* 145. (*Note* 48.) Where a bill is dishonored, notice may be given on the day of dishonor, though it is the day on which it becomes due. *Burbridge v. Manners,* 3 *Campb.* 193 *Hartley v. Case,* 1 *C. & P.* 556. But it is sufficient if notice is given on the following day. *Ibid.* The time within which notice was given must not be left to inference; thus where notice ought to have been given within two days, and a witness swore that it was given in *two or three*

days, Lord Ellenborough ruled that it was not sufficient, and nonsuited the plaintiff. *Lawson v. Sherwood*, 1 *Stark.* 314. *and post*, *Chapter* XII. Where the parties reside in the same town, the person giving notice has the whole of the day on which he learns the dishonor of the bill, and of the following day, to transmit the notice, which must however be given before the expiration of the latter day. The plaintiff received notice on Monday the 20th. On Tuesday the 21st, a few minutes past five, p.m. the plaintiff's clerk put a letter into the two-penny post office, forwarding the notice. This letter, according to the course of the two-penny post, was not delivered out till Wednesday morning. *Per Lord Ellenborough*, "It is of great importance that there should be an established rule on this subject, and I think there can be none more convenient than that where the parties reside in London, each party should have a day to give notice. I have said before that the holder of a bill of exchange is not, *omissis omnibus aliis negotiis*, to devote himself to giving notice of its dishonor. It is enough if this be done with reasonable expedition. If you limit a man to a fractional part of a day, it will come to a question how swifty the notice can be conveyed, a man and horse must be employed, and you will have a race against time. But here a day has been lost. The plaintiff had notice himself on the Monday, and does not give notice to his indorser till the Wednesday. If the party has an entire day he must send off his letter conveying the notice within post time of that day." The plaintiff was nonsuited. *Smith v. Mullett*, 2 *Campb.* 208.

Where the parties do not reside in the same place and the notice is sent by the post, the rule is that it is sufficient to send it by the post of the day after that on which the party forwarding it receives the notice of dishonor, although the post may leave on the day upon which he receives it, in such time as to afford him an opportunity of sending the notice by that post. Thus where the indorsee of a bill, payable at a banker's in London, deposited it with his bankers in the country, who caused it to be presented for payment on the 14th, when it was dishonored and notice sent by post to the country bankers on the 15th, which reached them on the morning of the 17th, (Sunday), and they on the next day sent notice by the post to the plaintiffs, but not before twelve at noon, at which hour a post set out for the place where the indorsee lived, which would have brought the notice a day earlier, it was held that this notice was within time. *Per Ld. Ellenborough*, "It has been laid down, I believe since the case of *Darbyshire v. Parker*, (6 *East*, 3,) as a rule of practice, that each party into whose hands a dishonored bill may pass should be allowed one entire day for the purpose of giving notice; a different rule would subject every party to the inconvenience of giving an account of all his other engagements, in order to prove that he could not reasonably be expected to send notice by

the same day's post which brought it. The rule is, I believe, in conformity with what *Marius* states upon the subject of notice, and it has been uniformly acted upon, at Guildhall, by this court for some time. It has moreover this advantage, that it excludes all discussion as to the particular occupations of the party on that day." *Bray v. Hadwen*, 5 *M. & S.* 68. So where the defendant, being indebted to the plaintiff, paid him the debt in country bank notes, on a Friday, several hours before the post went out, and the plaintiff transmitted them partly by a coach on Saturday, and partly by Sunday night's post, and both parts arrived in London on Monday, and were presented for payment and dishonored on Tuesday, it was held that the plaintiff had not been guilty of laches in not transmitting the notes by the post of Friday. *Per Abbott, C. J.* "It is of the greatest importance to commerce, that some plain and precise rule should be laid down to guide persons in all cases as to the time within which notices of the dishonor of bills must be given. That time I have always understood to be the departure of the post on the day following that in which the party receives the intelligence of the dishonor. If instead of that rule we were to say that the party must give notice by the next practicable post, we should raise in many cases difficult questions of fact, and should, according to the peculiar local situations of parties, give them more or less facility in complying with the rule. But no dispute can arise from adopting the rule which I have stated." *Williams v. Smith*, 2 *B. & A.* 496. So where notice of the dishonor of a bill was received by the plaintiff by letter, on the 6th April, being a Sunday, and on the Tuesday evening, he sent notice by the post to the defendant, the court held that the plaintiff was not bound to open the letter till the Monday morning, and that taking him to have received notice of the dishonor at that time, he had done quite sufficient in transmitting it to the defendant by the next day's post. *Wright v. Shawcross*, 2 *B. & A.* 501. (*n.*) *and see Langdale v. Trimmer*, 15 *East*, 293. Where there is a post on the day on which the party who is to forward it receives the notice, and no post on the following day, it is sufficient to forward the notice by the post of the third day. The plaintiff received notice at nine o'clock on the morning of Thursday, at Chorley. The post left Chorley at six in the evening. He did not write by that post, which would have arrived in London, to which his letter was addressed, on Saturday, and there being no post to London on the Friday, he did not write till the Saturday. It was objected in an action against the drawer that this was laches, for that no case had decided that the party was intitled to make a delay of two days, when he might by ordinary diligence avoid it. But *per Lord Tenterden C. J.* "In these cases it is of great importance to have a fixed rule, and not to resort to nice questions of the sufficiency in each particular case of a certain number of hours

or minutes. The general rule is, that the party need not write on the very day that he receives the notice. If there be no post on the following day it makes no difference; the next post after the day on which he receives the notice is soon enough." *Geill v. Jeremy*, 1 *M. & M.* 61; *and see Hawkes v. Salter*, 4 *Bingh.* 715. Where a bill is in the hands of the banker of the holder at the time of its dishonor, the banker has the same time to give notice to his customer as if he had himself been the holder. A bill deposited by the plaintiff in the hands of his banker, became due on Saturday, 1st October. It was presented for payment about two o'clock, on that day, by the bankers, and payment was refused, and it was again presented between nine and ten p. m. the same day by a notary. On Monday, the 3d, the bankers gave notice to the plaintiff, who on Tuesday gave notice to the defendant. The court of C. P. held, that notice was given in time; but Lord Alvanley C. J. added, that he wished to be understood to say, that if a bill be returned to a banker, he is bound to give notice to his principal that very day, if he can do so by using ordinary diligence. *Haynes v. Birks*, 3 *B. & P.* 599. So, where the plaintiff lodged a bill in the hands of his bankers, who presented it on the 4th for payment, when it was dishonored, and on the 5th returned it to the plaintiff, who on the 6th gave notice to the defendant by the twopenny post, it was held that the plaintiff was intitled to recover. *Scott v. Lifford*, 9 *East*, 347. 1 *Campb.* 246. *S. C.* So, where the plaintiff lodged a note with his bankers, which was presented by them on the 25th and dishonored, and was again presented on the 26th, when notice was given to the plaintiff residing in Holborn, who by the next day's post gave notice to the defendant, who lived at Farnham, both notices were held to be in time; and *per Lord Ellenborough*, "The banker presented it as a distinct holder at the time, and not as identified with his customers." *Langdale v. Trimmer*, 15 *East*, 291; *and see Bray v. Hadwen*, 5 *M. & S.* 68., *ante*, *p* 209.

Where there are several indorsers it is not enough that the drawer or indorser receives notice in as many days as there are subsequent indorsees, unless it be shewn that each indorsee gave notice within a day after receiving it, for if one has been beyond the day, the drawer and prior indorsers are discharged. *Per Lord Ellenborough*, *Marsh v. Maxwell*, 2 *Campb.* 210. (*a.*) The plaintiff was the eleventh indorser of a bill, the defendant the eighth. The plaintiff had indorsed to Bennett, Bennett to Fletcher, Fletcher to Hordem, and Hordem to Sansom. The bill was dishonored on Saturday, the 30th of August; and on Monday, 1st of September, Sansom gave notice to Hordem. This reached Hordem the 2d, on which day, he gave notice to Fletcher. Fletcher gave notice to Bennett on the 3d, which reached Bennett on the 4th, but Bennett did nothing till the 8th, when he gave notice to the plaintiff, who paid the

bill. It was argued, that if notice had been given to each successive indorser in the regular course, the defendant would not have received it at an earlier period; but the court held, that the plaintiff had been discharged by the laches of Bennett, and that he could not, by paying the bill, place the prior indorsers in a worse situation than that in which they would otherwise have been. *Turner v. Leech*, 4 *B. & A.* 451.

If a party receives notice on a Sunday, Christmas-day, or Good Friday, he is in the same situation as if he did not receive it till the following day, and where the notice ought in due course to have been given on one of these days, it is sufficient to give notice on the day following, as was the law before the passing of the statute 7 & 8 Geo. 4. c. 15. *See Tassell v. Lewis*, 1 *Ld. Raym.* 743. *Wright v. Shawcross*, *ante*, *p.* 209. *Scott v. Lifford*, *ante*, *p.* 210. *Bayley*, 220. And now by the 1st sec. of the above statute, it is enacted, that from and after the 10th day of April, 1827, in all cases where bills of exchange or promissory notes shall be payable, either under or by virtue of the said recited act, (39 & 40 *Geo.* 3. *c.* 42. *ante*, *p.* 159), or otherwise, on the day preceding any Good Friday, or on the day preceding any Christmas-day, it shall not be necessary for the holder or holders of such bills of exchange, or promissory notes, to give notice of the dishonor thereof, until the day next after such Good Friday or Christmas-day, and that whenever Christmas-day shall fall on a Monday, it shall not be necessary for the holder or holders of such bills of exchange, or promissory notes, as shall be payable on the preceding Saturday, to give notice of the dishonor thereof until the Tuesday next after such Christmas-day, and that any such notice given as aforesaid, shall be valid and effectual to all intents and purposes; and by section 2, (*see ante*, *p* 159.), a similar provision is made with regard to bills falling due on a fast or thanksgiving day.

So, a Jew is not obliged to forward notice on the day of a great Jewish festival, during which it is unlawful for all persons of that persuasion to attend to any sort of business. *Per Lord Ellenborough*, "The law required him to give notice with reasonable diligence, and I think he did so, if he sent off the letter as soon as he could after the termination of the festival, during which he was absolutely forbid to attend to secular affairs. The law-merchant respects the religion of different people. For this reason we are not obliged to give notice of the dishonor of a bill on our Sunday." *Lindo v. Unsworth*, 2 *Campb.* 602.

Within what hours.] The notice, if to a banker, should be delivered within banking hours; if to a merchant, or other person, within seasonable hours. Thus, where notice of the dishonor of a bill had been delivered between eight and nine

o'clock at night, it was objected, that the notice must be given within the hours of business, in the same manner as a bill must be presented for payment within these hours, but the court of C. P. held, that that rule prevailed only, if a bill was accepted, payable at a banker's, in which case it must be presented for payment within the hours of business. *Jameson v. Swinton*, 2 *Taunt.* 224. *and see Bancroft v. Hall, Holt*, 476. *ante, p.* 207.

Protest of foreign bills.] Where a foreign bill is dishonored, it is not only necessary to give notice of the dishonor, but a protest must be made by a notary public, or if there be no such notary in or near the place where the bill is payable, by an inhabitant, in the presence of two witnesses, and in some cases a copy, or some other memorial of it, should accompany the notice. *Bayley*, 210. Thus, in an action against the drawer of a foreign bill of exchange, the question was, whether it was necessary to prove a protest for non-acceptance, and the court thought the matter clear, on the ground of the protest being part of the custom of merchants in the case of a foreign bill. *Gale v. Walsh*, 5 *T. R.* 239. *See also Brough v. Parkings*, 2 *Ld. Raym.* 993. *Rogers v. Stephens*, 2 *T. R.* 717. A protest made abroad proves itself, *vide post*, *Chap.* XII. In the same manner foreign courts give credit to a notarial protest. *Molloy, b.* 2. *c.* 10. *s.* 25. *Dacosta v. Cole, Skinner*, 272. If the bill is lost, a protest may be made on a copy. *Dehers v. Harriott*, 1 *Show.* 163.

Where a person, who ought to receive notice of the dishonor of a foreign bill, is resident in this country, it is sufficient to give him notice of the dishonor of the bill, without sending at the same time the protest, or a copy. The defendant drew a bill at Buenos Ayres, and, before it became due, he returned to this country. The bill was dishonored, and protested, and notice of the dishonor, but not of the bill having been protested, was left at the defendant's house. It was held by the court of K. B. that the notice alone was sufficient to charge the defendant. *Per Lord Ellenborough*, "It did not appear that the defendant requested to have the protest, and it would be hazarding too much to leave it without some request. He had due notice of the fact of dishonor of the bill; and as the circumstances of parties alter, the rule respecting notice also changes according to the convenience of the case. If the party is abroad he cannot know of the fact of the bill having been protested, except by having notice of the protest himself, but if he be at home, it is easy for him, by making inquiry, to ascertain that fact." *Robins v. Gibson*, 1 *M. & S.* 288. 3 *Campb.* 334. *S. C.*

A foreign bill, payable to the defendant, was indorsed by him to the plaintiff. When the bill was drawn, the defendant was in Jamaica, but had a house at Stepney, in this country, where his family lived. The bill being dishonored, was pro-

tested, and notice left at the defendant's house, but without any copy of the protest. This was objected to, but Lord Kenyon overruled the objection, and the plaintiff recovered. *Cromwell v. Hynson*, 2 *Esp.* 511. (*Note* 49.)

Protest of foreign bills — within what time.] With regard to foreign bills all the books agree that the protest must be made on the last day of grace. *Per Buller, J. Leftly v. Mills*, 4 *T. R.* 174. Whether it be sufficient to *note* the bill on that day, and to draw up the protest afterwards, does not appear to be expressly decided. (*Note* 50.) The use of noting, it is said, is, that it should be done the very day of refusal, and the protest may be drawn any day after by the notary, and be dated the day the noting was made. *B. N. P.* 272. A bill became due on the 24th April, it was then presented and dishonored, and noted, and on the 12th May the notary who had noted it protested it in form; in an action against the indorser who was resident in England, it being objected that the plaintiff could not recover on account of the want of a protest drawn up and dated of the same day with the refusal, Lord Kenyon said, he was of opinion that if the bill was regularly presented and noted at the time, the protest might be made at any future period. It was certainly necessary to have the protest for the purpose of litigation, as, in declaring upon the bill, if it was a foreign one, the case cited (*Gale v. Walsh*, 5 *T. R.* 239.) had decided that the protest must be stated and proved; but that case went no further, and was silent as to the time when the protest should necessarily be made; but though not made at the time of the refusal, if regular notice of non-payment had been given, he thought the want of an actual protest afforded no justifiable ground in law to the indorser to refuse payment of the bill. On the application of the defendant's counsel, the point was reserved and the case came on afterwards to be argued, but a *venire de novo* was awarded. On the second trial before Lord Ellenborough, his lordship expressed himself of the same opinion as Lord Kenyon. *Chaters v. Bell*, 4 *Esp.* 48. It is stated by Mr. Selwyn, that the court, after the argument of the above case, conceiving the question to be of great importance directed it to be turned into a special verdict; but that the sum in dispute being small and the parties unwilling to incur the expense of a special verdict, the recommendation of the court was not attended to, and the case was not mentioned again. *Selw. N. P.* 345. *4th ed.* In a late case where a bill was noted on its being dishonored, and a third party then paid it as *supra protest*, and the protest was afterwards drawn up purporting to have been made before the payment, Lord Tenterden ruled that the payment thus made was irregular, the custom being that a formal protest must be made before payment is made for the honor of any party to the bill. *Vandewall v. Tyrell*, 1 *M. & M.* 87.

Though where the party to whom notice of the dishonor of a foreign bill is to be given resides in this country, a copy of the protest need not be sent with the notice, yet the bill must be protested. *See Chaters v. Bell*, 4 *Esp.* 48. (*see ante, p.* 112.) A bill drawn in Ireland is a foreign bill, and requires a protest. *Ibid.*

If the drawer has no effects in the hands of the drawee, a protest is not necessary to charge the drawer. *Orr v. Maginnis*, 7 *East*, 359. *Legge v. Tharp*, 12 *East*, 177. 2 *Campb.* 310. *S. C. post.* And a subsequent promise will also excuse the want of a protest. *Gibbon v. Coggon*, 2 *Campb.* 188. *post.* But as the English rule of law on this subject may not be adopted in foreign courts, it is advisable to protest a foreign bill in all cases where it may be necessary to enforce it in the courts of other countries. *See Legge v. Thorpe*, 12 *East*, 177.

Protest of inland bills.] The protesting of inland bills is regulated by the statutes 8 & 9 W. 3. c. 17. s. 1. and 3 & 4 Ann. c. 9. s. 4.

By 9 & 10 W. 3. c. 17. s. 1. reciting that great damages and other inconveniences do frequently happen in the course of trade and commerce, by reason of delays of payment, and other neglects on inland bills of exchange in this kingdom, it is enacted that from and after the 24th day of June, 1698, all and every bill or bills of exchange, drawn in, or dated at and from any place in the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, of the sum of 5*l.* sterling or upwards, upon any person or persons of or in London, or any other trading city, town, or any other place (in which said bill or bills of exchange shall be acknowledged and expressed the said value to be received,) and is, and shall be drawn payable at a certain number of days, weeks or months after date thereof, and from and after presentation and acceptance of the said bill or bills of exchange, (which acceptance shall be by the underwriting the same under the party's hand so accepting), and after the expiration of three days after the said bill or bills shall become due, the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may, and shall cause the said bill or bills to be protested by a notary public, and in default of such notary public, by any other substantial person of the city, town or place, in the presence of two or more credible witnesses, refusal or neglect being first made of due payment of the same, which protest shall be made and written under a fair written copy of the said bill of exchange, in the words or form following:

Know all men, that I, A. B., on the day of at the usual place of abode of the said , have demanded

payment of the bill, of which the above is the copy, which the said did not pay; wherefore I, the said do hereby protest the said bill. Dated this day of .

And by stat. 3 & 4 Ann. c. 9. s. 4. reciting the act of 9 W. 3. (*supra*) and reciting that by there being no provision made therein for protesting such bill or bills, in case the party on whom the same are or shall be drawn refuse to accept the same by underwriting the same under his hand, all merchants and others do refuse to underwrite such bill or bills, or make any other than a promissory acceptance, by which means the effect and good intent of the said act in that behalf is wholly evaded, and no bill or bills can be protested before, or for want of such acceptance by underwriting the same as aforesaid; "it is enacted, that from and after the 1st day of May, 1705, in case, upon presenting of any such bill or bills of exchange, the party or parties, on whom the same shall be drawn, shall refuse to accept the same, by underwriting the same as aforesaid; the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the said bill or bills to be protested for non-acceptance, as in case of foreign bills of exchange, for which protest there shall be paid two shillings, and no more."

Notwithstanding these statutes, the protesting of an inland bill is in no case necessary, for not only may the holder recover the principal money due upon the bill without such protest; *Brough v. Parking's*, 2 *Ld. Raym.* 992. 6 *Mod.* 80. *S. C. Boulager v. Talleyrand*, 2 *Esp.* 550; but also the interest. *Windle v. Andrews*, 2 *B. & A.* 696. By the terms of the statute an inland bill must not be protested till *after* the expiration of the day on which it is payable. These statutes do not authorise the protesting of inland bills payable *after sight*. *Leftly v. Mills*, 4 *T. R.* 170.

Protest for better security.] The custom of merchants is said to be, that if the drawee of a bill absconds before the day of payment, the person to whom it is payable may protest it to have better security for the payment, and to give notice to the drawer of the absconding of the drawee. 1 *Ld. Raym.* 743. *Beawes, pl.* 22, 23, 24, 26, 27, 29. The neglect to make this protest, or to give notice of the absconding of the drawee, will not (unless the bill has been presented for acceptance and refused, of which notice must be given) prejudice the rights of the holder against the drawers and indorsers. *Beawes, pl.* 25. There does not appear to be any mode at law of enforcing the giving of better security, and the practice of protesting for better security can, therefore, only be regarded as a prudent precaution for the purpose enabling the drawer to provide for the bill, or for the purpose of enabling some third person

to accept the bill *supra* protest. *Ex parte Wackerbarth*, 5 *Ves.* 574.

Excused — by part payment.] The party entitled to notice may waive his right to it, either by part payment or by a promise to pay, provided that at the time of such promise or payment he had notice of the fact of dishonor. Thus where in an action upon a promissory note by the indorsee against the indorser, it was proved that the defendant had paid part of the money; Lee, C. J. held that sufficient to dispense with proving a demand upon the maker of the note. *Vaughan v. Fuller*, 2 *Str.* 1246. So where in an action against the drawer of a bill it appeared that after the dishonor of the bill, the defendant had paid part, and that no objection had been made to the want of notice, Mansfield, C. J. left it to the jury to presume a notice to the drawer, and a verdict being found for the plaintiff, the court of C. P. refused to set it aside. *Horford v. Wilson*, 1 *Taunt.* 12.

Excused — by promise to pay.] A promise to pay the bill is a waiver of notice, for it is an admission that the plaintiff has a right to resort to the defendant upon the bill, and that the latter has received no damage by the want of notice. Thus it was ruled by Raymond, C. J., that if the indorser has neglected to demand of the drawer in a convenient time, a subsequent promise to pay by the drawer will cure his laches. *Haddock v. Bury*, T. 3 *G.* 2. *MS. Burnet*, J. 7 *East*, 236. (*n.*) The holder of a note which had been dishonored, kept it seventeen or eighteen days enquiring for the maker; he then wrote to his agent to inform the defendant, the indorser, who returned no answer. About ten days after, the agent went to the defendant, who acknowledged the receipt of the letter, and said that the reason why he had not sent an answer, was that the maker had promised to order payment in London, and as it was not paid, that *he would certainly pay it the day after*. *Per Wilmot*, J. "Holding the note for so long a time was unreasonable and would have discharged the defendant, if, when he received the first notice he had disclaimed the having any thing to do with it: but by his conduct he has waived the neglect, and acquitted the plaintiff." However, he left it to the jury, who found for the defendant. *Whitaker v. Morris*, 1 *Esp. Dig. N. P.* 69. 4*th Ed.* So where the drawer of a foreign bill, which was dishonored, on the holder representing that fact to him, and pressing him for payment, said *that it must be paid*, this was held in point of law to amount to a promise that the bill should be paid, and to do away with the necessity of considering the question relative to the want of notice. *Rogers v. Stephens*, 2 *T. R.* 713. *See also Anson v. Bailey*, *B. N. P.* 276. *Hopes v. Alder*, 6 *East*, 16. (*n.*) So where the defendant, the in-

dorser of a bill which had been dishonored, on being applied to said, "that he had not cash by him at that time, but if the witness would call in a day or two and bring the account, *he would pay it ;*" and a short time afterwards said, "that he had not had regular notice, but *as the debt was justly due he would pay it ;*" it was held, that this promise dispensed with proof of notice. *Lundie v. Robertson*, 7 *East*, *Rep.* 231. So, where in an action against the drawer, the plaintiff in lieu of the usual proof of the dishonor, &c., gave in evidence a letter of the defendant, in which he stated, that he was an accommodation drawer, and that the bill would be paid before the next term ; Lord Ellenborough said, "The defendant does not rely upon the want of notice, but undertakes that the bill will be paid before the term, either by himself or the acceptor. I think the evidence sufficient." *Wood v. Brown*, 1 *Stark.* 217.

Where the drawer of a bill became a bankrupt before the bill was due, and the bill when due was dishonored, and no notice of the dishonor given to the drawer ; but subsequently to the act of bankruptcy, the drawer on being asked if the bill would be paid, answered, *No—that it would come back ;* the court of K. B. held, that this was sufficient to supply the want of notice. *Brett v. Levett*, 13 *East*, 213.

The promise to pay must be unequivocal, and therefore, when a foreigner, the drawer of a bill which had been dishonored, and of which no notice had been given, being asked to pay the bill said, "I am not acquainted with your laws, if I am bound to pay it I will," the plaintiff was nonsuited. *Dennis v. Morrice*, 3 *Esp.* 158. In an action against the drawer of a bill, in order to obviate the want of notice, the clerk to the plaintiff's attorney was sworn, who stated, that having called upon the defendant after his arrest in this action, he asked him "What he had to propose by way of settlement ?" and that the defendant then said, "*I am willing to give my bill at one or two months,*" but that this offer was rejected. *Per Lord Ellenborough*, "This offer is neither an acknowledgment nor a waiver to obviate the necessity of expressly proving notice of dishonor. He might have offered to give his acceptance at one or two months, although being intitled to notice of the dishonor of the former bill, he had received none, and, although upon this compromise being refused he meant to rely upon the objection. If the plaintiff accepted the offer well and good ; if not, things were to remain on the same footing as before it was made." *Cuming v. French*, 2 *Campb.* 106. (*n.*) Where the indorser of a note, who was discharged by want of notice, on being arrested said to the bailiff, "*that it was true the note had his name on it, but that he had security, though he wished for time to pay it ;*" Lord Kenyon said, that when a person is arrested, and at the time ignorant of his rights, or whether he is bound by law to pay the demand or not, and under such circumstances makes any

confession and seemingly admits the demand, such admission shall not be allowed to be given in evidence to charge him. *Rouse v. Redwood*, 1 *Esp.* 156; *but see post*, *p.* 220.

A promise to pay made subsequently to the dishonor, not to the plaintiff, but to another party to the bill, will operate as a waiver of the notice in an action by the plaintiff. The defendant, the payee of a note, indorsed it to Fulford, Fulford to Potter the plaintiff, and Potter to Kirton, who indorsed it again. The note was dishonored the 24th December, but no notice reached the defendant till the 7th January, when Kirton having taken up the note, called on the defendant, who *promised to pay Kirton* the next day. Having failed in this, Kirton applied for and received payment from the plaintiff. The defendant objected the want of notice, but the plaintiff had a verdict, and on motion for a new trial, Lord Ellenborough said, that whether the promise to pay were made to the plaintiff, or to any other person who held the note at the time, it was equally evidence that the defendant was conscious of his liability to pay the note, which must be, because he had had due notice of the dishonor; and Bayley J. considered the promise by the defendant, either as an acknowledgment that he had had due notice of the dishonor, or that without such notice, he was the proper person to pay the note, as the party for whose use it was drawn. *Potter v. Rayworth*, 13 *East*, 417.

In an action upon a bill, drawn by the defendant, indorsed to Kinnear and by Kinnear to the plaintiff, it appeared that the bill bad been dishonored and no notice given to the defendant, but the plaintiff gave in evidence an agreement made between the defendant and Kinnear after the bill became due, by which, after reciting that the defendant had indorsed and drawn various bills of exchange, (one of them being the bill in question), and which were then all over-due, and which were or ought to be in the hands of the said Kinnear; it was agreed by Kinnear, that he would accept and take from the defendant the sums of money which might be due upon the bills by weekly payments, &c. At the trial the Chief Justice was of opinion, that the recital in the agreement was an acknowledgment by the defendant, that he was then in such a situation as to be liable to pay the bill, and consequently that he had received notice of dishonor, and the plaintiff obtained a verdict. On motion for a new trial, *Per Cur.* "The recital in the agreement is evidence that notice of dishonor was given to the defendant; for if notice had not been given, nothing would become due upon the bill from the defendant; the latter, therefore, would not have agreed to pay Kinnear whatever was due upon this particular bill, but would have insisted upon a discharge." *Gunson v. Metz*, 1 *B. & C.* 193. 2 *D. & R.* 334. *S. C.* The whole of what was said by the defendant when he made the subsequent promise must be taken together; therefore, in an action against

the drawer of a bill for 200*l.* where no notice had been given, but it was proved that the defendant had said, "I do not mean to insist upon want of notice, but I am only bound to pay you 70*l.*," Abbott C. J. ruled, that the plaintiff was only intitled to recover 70*l.* *Fletcher v. Froggatt*, 2 *C.* & *P.* 570.

Excused by part payment or promise to pay — only where the party knows of the laches.] Part payment or a promise to pay is only a waiver of notice, where the party paying or promising is acquainted with the fact of laches having been committed. Where the indorser of a bill of exchange, who had had no knowledge of its being presented for acceptance and refused after it became due, called on the holder and told him, that he would take up the bill as he came back, but on his return said he had been advised not to do it, the court of K. B. held that the indorser was nevertheless discharged. *Blesard v. Hirst*, 5 *Burr.* 2670. So where a bill was presented for acceptance and dishonored on the 8th November, but no notice was given to the indorser, the defendant, till the 6th January, and on the 11th the bill became due, and on the following day the indorser made a proposal to one of the plaintiffs to pay the bill by instalments, *Heath J.* was of opinion, that as the proposal was made under an ignorance of all the circumstances of the case, which it was material for the indorser to know, he was discharged by the laches of the plaintiffs. After verdict for the defendant, the court refused a new trial. *Per Ashhurst J.* "It is said that the defendant made himself subsequently liable by his proposal to pay the bill by instalments, which amounted to an acknowledgment of the debt. That argument might as well have been urged in the case of *Blesard v. Hirst*, (*supra*), as the present, if it had been thought material; for there the indorser absolutely promised to pay the bill on his return from Leeds, but on his being apprised, that he was not bonnd by law, he refused, and yet that was not held as a waiver of the want of notice." *Goodall v. Dolley*, 1 *T. R.* 712. *See Hopley v. Dufresne*, 15 *East*, 275. The above were cases of dishonor by the drawee refusing to accept, but where payment is refused and the defendant afterwards promises to pay, it is not necessary for the plaintiff to prove that the defendant knew that the bill had been actually presented and refused. Thus in an action against the indorser of a note, due 5th May, 1805, the plaintiff proved that in the year 1807, the defendant being requested to pay the note, promised he would, but prayed for further time. There was no evidence of presentment or notice, nor did it appear that when the defendant promised to pay, he knew whether any application had been made to the maker. It was contended for the defendant, that it should appear that the promise was made with full knowledge of the laches of the holder, but Bayley J. held, that where a party to a bill or note know-

ing it to be due, and knowing that he was intitled to have it presented when due to the acceptor or maker, and to receive notice of its dishonor promises to pay it, this is presumptive evidence of the presentment and notice, and he is bound by the promise so made. *Taylor v. Jones*, 2 *Campb.* 105.

It seems to have been the opinion of Lord Kenyon in the following case, that in order to render a promise to pay a waiver of notice, the party making it must not only be cognizant of the facts, but also of the law, and must be aware that he is legally discharged. The plaintiff gave a bill to the defendants on L. and Co. The defendants gave time to the acceptors, and they afterwards became insolvent, of both which circumstances the defendants gave the plaintiff notice, and he at their request in a letter, accepted another bill, which he afterwards paid, and this action was brought to recover back the money paid. *Per Ld. Kenyon*, "My opinion is against the defendants. It is not only necessary that the plaintiff should know all the facts, but that he should know the legal consequences of them; it seems to me, that the plaintiff did not know the legal consequences of them, and that he paid the money under an idea that he might be compelled to pay it. When the defendants granted this indulgence of two months to L. & Co., they gave it at their own risk. Where a man knowing all the facts explicitly, and being under no misapprehensions with regard to any of them, nor of the law acting upon them, chooses to pay a sum of money, *volenti non fit injuria*, he shall not recover it back again; but the letters of the plaintiff in this case prove directly the contrary, for they are written in a complaining style." *Chalfield v. Paxton*, 38 *Geo.* 3. *Chitty*, 304, 5*th Ed.* 236. 7*th Ed.* *Differently reported*, 2 *East*, 471. (*n*). 5 *Taunt.* 155. But when this case was afterwards brought before the K. B. there were other circumstance of fact relied on, and it was so doubtful at last on what precise ground the case turned, that it was not reported, 2 *East*, 471; and the opinion of Lord Kenyon is not now considered to be law; (*See Bilbie v. Lumley*, 2 *East*, 469. *Brisbane v. Dacres*, 5 *Taunt.* 143;) as appears from the following case. In an action by the indorser against the drawer of a bill, the defence was time given to the acceptor. In answer to this it was proved, that after the indulgence, which was known to the defendant, he promised to pay the bill, saying to the plaintiff, "*I know I am liable, and if Jones does not pay it, I will.*" After verdict for the plaintiff, a new trial was moved for on the authority of *Chalfield v. Paxton* and *Bize v. Dickason*, (1 *T. R.* 285.); but the court considered those cases to have proceeded on the mistake of the person paying the money under an ignorance or misconception of the *facts* of the case, but here the defendant had made the promise with a full knowledge of the circumstances, three months after the bill had been dishonored, and could not now defend himself

upon the ground of his ignorance of *law* when he made the promise. *Stevens v. Lynch*, 12 *East*, 38. 2 *Campb.* 332. *S. C.*

Though an acknowledgment by the drawer of a bill, that the money remains due is construed into a promise to pay it, so as to dispense with notice, yet it has been held that such an acknowledgment by an indorser is not sufficient, but that it requires an express promise. The indorser of a bill, which had been dishonored, of which no notice had been given, in reply to a request to make provision for it, returned the following answer: "*I cannot think of remitting till I receive the draft; therefore, if you think proper, you may return it to T. & Co. if you think me unsafe.*" A verdict being found for the plaintiff, with liberty to move to enter a nonsuit, the court made the rule for entering a nonsuit absolute. *Per Mansfield C. J.* "I am extremely glad I saved this point, for my mind fluctuated upon it very much at the trial, but upon a further consideration, I do not find any case in which an indorser, after having been discharged by the laches of the holder, has been held liable upon his indorsement, except where an express promise to pay the bill has been proved; now the letter of the defendant contains no such express promise, but in a great measure shews, that the defendant was writing under a supposition that he was liable, and that the prior indorsers would pay the bill; for he desires that it may be sent to Trevor & Co., who were the indorsers next in priority; but when he afterwards finds that the case is otherwise, and that the other indorsers would not pay, and that he also was discharged, he refuses, as it was still open for him to do. I cannot consider this letter as conveying an absolute promise to pay at all events, whether Trevor & Co. did or not; and I think in this case, it would be too much to fix the defendant by any such implied promise. In most of the cases where the defendants have been held liable, they have either made an express promise to pay, or a promise when they had a full knowledge at the time that they were discharged, or where there was a real debt binding in conscience due from them; but none of the cases have gone to the extent of making this defendant liable, and to hold that he was in this instance, would be extending them beyond their fair import." *Borrodaile v. Lowe*, 4 *Taunt.* 93.

Excused, in case the drawer has no effects in the hands of the drawee.] If the drawer of a bill had not at the time of drawing, or at any time between that period and the time of the bill becoming due, any effects in the hands of the drawee, or any effects consigned to or on their way to him, or any reasonable ground to expect that he shall have effects in his hands when the bill becomes due, the drawer cannot insist upon the want of notice of the dishonor of the bill as a defence. This

point was first determined in the case of *Bickerdike v. Bollman*, 1 *T. R.* 405., in which it was held, that the drawer never having had any effects in the hands of the drawee, was not entitled to notice of dishonor. *Per Ashhurst J.* "As to the general rule, it has never been disputed that the want of notice to the drawer, after the dishonor of a bill, is tantamount to payment by him; but that rule is not without exceptions, and particularly in the case mentioned by the plaintiff's counsel, that notice is not necessary to be given, where the drawer has no effects in the hands of the drawee, *for it is a fraud in itself*, and if that can be proved, the notice may be dispensed with." *Per Buller J.* "If it can be proved on the part of the plaintiff, that from the time the bill was drawn, till the time it became due, the drawee never had any effects of the drawer in his hands, I think notice to the drawer is not necessary; for he must know whether he had effects in the hands of the drawee or not, and if he had none, he had no right to draw upon him and to expect payment from him, nor can he be injured by the non-payment of the bill, or the want of notice that it has been dishonored." Although the authority of the above decision has been often recognised, yet the policy and convenience of the rule there established have been frequently doubted. *See Rucker v. Hiller*, 16 *East*, 44. *Legge v. Thorpe*, 12 *East*, 175. *Clegg v. Cotton*, 3 *B. & P.* 241. *Orr v. Maginnis*, 7 *East*, 361. *Thackray v. Blackett*, 3 *Campb.* 165. *Cory v. Scott*, 3 *B. & A.* 622. *Claridge v. Dalton*, 4 *M. & S.* 231. *Ex parte Heath*, 2 *Ves. & B.* 240. *(See also Note* 51.) The rule that want of assets excuses notice to the drawer, extends also to foreign bills, of which it is not necessary under such circumstances to prove a protest. *Rogers v. Stevens*, 2 *T. R.* 713. *Legge v. Thorpe*, 12 *East*, 121. 3 *Campb.* 310. *S. C.*

Cotton in America, the agent of Cullen, drew a bill upon Cullen, and apprehending it might not be paid, lodged money in the hands of two several indorsers to answer the bill, in case it should be returned, and the indorsers gave an undertaking to restore the money, upon being exonerated from the payment of the bill. The bill was dishonored and no notice given to the drawer, and the court of C. P. held him to be discharged. They said that in this case there was no fraud in the drawer, which they considered the principle on which *Bickerdike v. Bollman* (*vide supra*) was decided. *Clegg v. Cotton*, 3 *B. & P.* 240.

Not excused, where the drawer has effects in the hands of the drawee at the time of drawing, or at any time before presentment.] Want of notice will not be excused if the drawer had effects in the hands of the drawee at the time of the bill being drawn, though not at the time of presentment for acceptance or payment. Thus, where at the time of a bill drawn, the drawer had effects (to what amount did not appear) in the hands

of the drawees, but in May, 1800, his whole balance, amounting then to 116*l.*, (the bill being for 172*l.* 18*s.* 1*d.*) was paid to him by them, they having no notice of the bill, and in July, when the bill was presented for acceptance, and up to the 22d October, when it was presented for payment and refused, the drawees had no effects of the drawer in their hands, it was held that want of notice to the drawer was not excused. *Per Lord Ellenborough,* "If the drawer have effects, at the time of the bill drawn, it would be very dangerous and inconvenient, merely on account of the shifting of a balance, to hold notice not to be necessary. It would be introducing a number of collateral issues in every case upon a bill of exchange, to examine how the account stood between the drawer and the drawee, from the time the bill was drawn, down to the time it was dishonored." *Orr v. Maginnis,* 7 *East,* 358. So, want of notice will not be excused, if the drawer had effects in the hands of the drawee, at any time between the the drawing and the becoming due of the bill. In an action against the drawer of a bill, of the dishonor of which no notice had been given, it appeared that when the bill was drawn, the drawees had no effects of the drawer in their hands, but that before the bill became due, he paid a sum of 400*l.* on their account. *Per Lord Ellenborough,* "I think the drawer has a right to notice of the dishonor of a bill, if he has effects in the hands of the acceptor, at any time before it becomes due. In that case he may reasonably expect, that the bill will be regularly paid, and he may be prejudiced by receiving no notice that it is dishonored. I am aware that the inquiry has generally been as to the state of accounts between the drawer and drawee, when the bill was drawn or accepted, but I conceive, the whole period must be looked to, from the drawing of the bill till it becomes due, and that notice is requisite, if the drawer has effects in the hands of the drawee, at any time during that interval." *Hammond v. Dufresne,* 3 *Campb.* 145.

Not excused, where the drawer has effects in the hands of the drawee, though to less amount than the bill.] It is not necessary in order to intitle the drawer to notice of dishonor, that the amount of the effects in the hands of the drawee should equal the amount of the bill. Thus, where the defendant drew two bills of upwards of 1800*l.* each, on P. & Co., and at the time of drawing had no effects in the hands of the drawees, but before the bills became due, contracted engagements on account of P. & Co. to the amount of about 1000*l.*, Lord Ellenborough held, that the drawer was intitled to notice. "The excuse of want of effects, I think, (said his Lordship,) is equally unavailing as to both bills. I cannot make any distinction between the two. If there was an open account between the parties, and the acceptors were indebted in any sum to the drawer be-

fore the bills became due, I cannot say that he must necessarily have been aware before hand, that either of them would be dishonored." *Thackray v. Blackett*, 3 *Campb.* 164. But, in a later case, the court of King's Bench seems to have been of opinion, that the want of notice is no defence, where the defendant had not, at the time the bill became due, *sufficient* effects; but the judgment in that case may be supported on another ground. *Smith v. Thatcher*, 4 *B. & A.* 200.

Not excused, where, though there are no actual effects, there is a reasonable expectation of the bill being honored.] Many cases have arisen, as to what shall be accounted equivalent to having effects in the hands of the drawee. "I do not mean to say," observed Lord Ellenborough, in *Legge v. Thorpe*, 12 *East*, 175., "that *actual value* in the hands of the drawee, at the time of drawing, is essentially necessary to intitle the drawer to notice in case of dishonor, for circumstances may exist, which would give a drawer good ground to consider that he had a right to draw a bill upon his correspondent, as where he had consigned effects to him to answer the bill, though they may not have come to hand at the time the bill was presented for acceptance." But when the drawer, at the request of the drawee, an executor, had employed the payee to do some work on the estate of the testator, and drew the bill for the amount of the work, which the drawee refused to accept, alleging that he had no assets, it was held, that the drawer was not intitled to notice, for he had no effects in the drawee's hands, nor had taken any means to furnish him with any. *Legge v. Thorpe*, 12 *East*, 171. 2 *Campb.* 310. *S. C.* In an action against the drawer of a bill, where no notice had been given of dishonor, it appeared, that the bill had been drawn against a cargo of indigo and hides shipped by the drawer; that the cargo was, at that time, in the hands of a broker for sale; that one Whitby was to pay over the proceeds to answer the bill, that before the bill had been presented for payment, the hides had been sold and a loss had arisen on them, but that the indigo was not sold; Lord Ellenborough ruled, that the bill having been drawn on expected funds, it was necessary to prove notice of its dishonor. *Robins v. Gibson*, 3 *Campb.* 334.

The general rule laid down in *Bickerdike v. Bollman*, is thus qualified by Lord Ellenborough in *Brown v. Maffey*, 15 *East*, 221. "That exception must be taken with some restrictions, as where a drawer, though he might not have effects at the time of the drawing of the bill in the drawee's hands, has a running account with him, and there is a fluctuating balance between them, and the drawer has reasonable ground to expect he shall have effects in the drawee's hands when the bill becomes due; in such cases I have always

held the drawer to be entitled to notice, because he draws the bill upon a reasonable presumption that it will be honored." In an action against the drawer of a bill to whom no notice of dishonor had been given, it appeared that the defendant was sent out to Petersburgh to purchase goods, which were to be consigned to the drawees in London. He accordingly consigned several cargoes to them, and drew bills upon them to a large amount. They accepted, and paid bills so drawn, for more than the value of all the consignments. The cargo, in respect of which the bill in question had been drawn, had been detained in Russia for want of a licence, and was so materially damaged as hardly to be sufficient to pay the freight when it arrived. The defendant had considerably overdrawn his account with the drawees, and from the time this bill was drawn till it became due, they had no effects of his in their hands. Lord Ellenborough was of opinion that the drawer was discharged by want of notice. "If," said his Lordship, "there be a reasonable expectation that a bill of exchange will be honored upon the strength of a consignment, I am of opinion the drawer is entitled to notice of its dishonor, though it turns out that the drawee never has any effects in his hands to meet the payment of it. This cannot be considered visionary paper, with respect to which the custom of merchants need not be observed. The object of notice is not merely to enable the drawer to withdraw his effects from the hands of the drawee, but to provide for payment of the bill thus suddenly cast upon himself, and to make prompt arrangements suited to this unexpected emergency. Where the drawer has solid reason to believe that the bill will be honored, he is necessarily damnified, and therefore, he is discharged by the laches of the holder." *Rucker v. Hiller*, 3 *Campb.* 217. The plaintiff in the above case being nonsuited, the court of K. B. refused to set the nonsuit aside. 16 *East*, 43. If the drawer has effects in the hands of the drawee, he is entitled to notice, although he is indebted to the drawee in a larger amount. Thus, in an action against the drawer of a bill of 250*l.* where the drawees stated, that when the bill was presented, they had produce in their hands belonging to the drawer to the amount of about 1500*l.* but that he owed them 10,000*l.* and that they had appropriated the effects in their hands to go in satisfaction of this debt, Lord Ellenborough held notice necessary, and said "If a man draws upon a house with whom he has no account, he knows that the bill will not be accepted; he can suffer no injury from want of notice of its dishonor, and therefore, he is not entitled to such notice. But the case is quite otherwise where the drawer has a fluctuating balance in the hands of the drawee. There notice is peculiarly requisite. Without this, how can the drawer know that credit has been refused to him, and that his bill has been dishonored? It is said here, that the effects in the hands of the drawees were all

appropriated to discharge their own debt; but that appropriation should appear by writing, and the defendant should be a party to it." *Blackham v. Doren*, 2 *Campb.* 504. Where the drawer had supplied the drawee with goods which were not to be paid for until after the bill became due, it was held that the drawer was not entitled to notice, as he could not have had any reasonable expectation of the bill being paid. *Per Lord Ellenborough*, "As to funds, though there were goods of the defendant's in the drawee's hands at the time of the drawing, yet they were not such as could be properly set against the drawing; and as to any reasonable expectation that the bill would be paid, it was neither accepted, nor had the defendant any claim upon the drawee to have it honored, according to the due course of credit between them, till the end of the year." *Per Le Blanc, J.* "I perfectly agree that it is not necessary that the drawer should have effects in money in the hands of the drawee, either at the time when the bill is drawn or when it becomes due. For if the bill be drawn in the fair and reasonable expectation that in the ordinary course of mercantile transactions, it will be accepted or paid when due, the case does not range under that class of cases of which *Bickerdike v. Bollman* is the first. But here the defendant did not draw the bill with any reasonable expectation that it would be accepted or paid, but on the contrary, with a pretty clear assurance that it would be dishonored." *Claridge v. Dalton*, 4 *M. & S.* 226 The delivery of cross-acceptances by the drawer to the acceptor, will be equivalent to the having effects in the acceptor's hands. In an action against the drawer of a bill to whom no notice of dishonor had been given, it appeared that the acceptor had been introduced to the defendant for the purpose of borrowing money, and had received his acceptances to a large amount. Some of these the acceptor had negotiated, and had been obliged to take up when due. At the time the bill in question was accepted, two of the defendant's acceptances to a much larger amount than the bill in question, which the acceptor had negotiated and raised money upon, were outstanding, but no money passed in consideration of his acceptance of the bill in question. *Per Best, C. J.* "I am strongly of opinion that this is not a case in which the plaintiff is relieved from the necessity of proving a notice. The principle upon which notice is dispensed with, is that a fraud has been committed in drawing on a person with whom the drawer had no effects, and on whom he had no right to draw. That is not so here. The defendant was at the time liable on acceptances given to the acceptor, and on which the latter had raised money, and he had a right to draw on him to a greater extent than this bill." *Spooner v. Gardener*, *R. & M.* 84.

In the case of *Ex parte Heath*, 2 *Ves. & B.* 240, the Lord Chancellor made the following observations; "According to

the old rule, a bill of exchange, purporting upon the face of it to be for value received, the implication of law from the acceptance was, that the acceptor had effects. Then they came to this general doctrine, that it is not necessary for the holder to give notice, if he can shew, that the acceptor had no effects. The first objection is, who is to decide whether there are effects or not? In the simple case, where there is nothing but that particular bill, and no other dealing between them, there is no difficulty; but if there are complicated engagements, and various accommodation transactions, no one can say whether there are effects or not; and there can be no stronger instance than that, in the case of *Walwyn v. St. Quintin*, 2 *Esp. N.P.C.* 515, Lord Chief Justice Eyre, a very good lawyer, left it to the jury to decide, without any solution of the question, whether title deeds are effects; but a rule, that securities cannot be effects in any case, would be quite destructive of all commercial dealing. Are not short bills, for instance, effects? Is it of no importance to the holder to have notice that he may withdraw them from the possession of the acceptor? The courts were obliged necessarily to decide, that if bills were accepted for the accommodation of the drawer, and that there was nothing but that paper between them, notice was not necessary; the drawer being, as between him and the acceptor, first liable; but, if bills were drawn for the accommodation of the acceptor, the transaction being for his benefit, there must be notice without effects, and if in the result of various dealings the surplus of accommodation is on the side of the acceptor, he is with regard to the drawer, exactly in the situation of an acceptor, having effects, and the failure to give notice may be equally detrimental."

Not excused, where though the drawer has no effects in the hands of the drawee, he would have a remedy over.] The rule laid down in *Bickerdike v. Bollman* (*supra*) does not apply to cases where, although the drawer has no effects in the hands of the drawee, he would yet have a remedy against some other party. In the case of *Walwyn v. St. Quintin*, 1 *B. & P.* 552, this distinction, indeed, does not appear to have been taken. There the bill was drawn to accommodate the indorser, who had placed securities on which he wished to raise money in the hands of the acceptor, but the drawer had no effects in his hands. It was held that want of notice did not discharge the drawer, since, as it was said, notice could be of no use to him, his situation being this, that if the acceptor did not pay, he must, and might then, and not till then, resort to the acceptor to be re-imbursed. The authority of this decision has however been overthrown by the following cases. Whitmarsh drew on Neales, payable to Fiander or order, who indorsed to defendant, who indorsed to Cosier, who indorsed to Woods, who indorsed to the plaintiffs. All the parties previous to

Woods were accommodation parties. The bill was drawn for the accommodation of Woods. The defendant knew that Cosier had received no value for his indorsement, but it was not proved that at the time the defendant indorsed the bill, he knew that the drawer had no effects in the hands of the drawees. The plaintiffs not having given notice of the dishonor to the defendant, Bayley, J. thinking such notice material to the defendant, with respect to his remedy over against Woods, directed a nonsuit, which the court of K. B. refused to set aside. *Brown v. Maffey*, 15 *East*, 216. So where the defendant drew a bill in his own favor for the accommodation of L. & Co. to whom he indorsed it, and by whom it was indorsed to the plaintiffs, it was held by the court of K. B., that the defendant was discharged by want of notice of dishonor. *Per Abbott, C. J.* "There is great difficulty in distinguishing this case from *Walwyn v. St. Quintin*, (*supra.*) but I must say that I cannot assent to the law there laid down; for if notice had in that case been given to the drawer, he might have had his remedy over against a third person." *Per Bayley J.* "Where the drawer has no effects in the hands of the acceptor, that is *primâ facie* evidence that he will not be injured by the want of notice; but that *primâ facie* presumption may be rebutted, and if the drawer can shew actual prejudice, it takes the case out of *Bickerdike v. Bollman*. One test is this: suppose the drawer to pay the bill, has he any remedy over against a a third person? In the case of *Bickerdike v. Bollman*, he had none; but here, if the defendant had paid the bill, he would clearly have had a remedy over against L. & C., because they impliedly undertook to indemnify him, and he would also, as it seems to me, have had a remedy over against the acceptor. The case of *Walwyn v. St. Quintin* (*supra*) is very similar to he present, and I am not sure that it can be distinguished from it: that case, however, is inconsistent with the decision in *Brown v. Maffey.*" (*supra.*) *Cory v. Scott*, 3 *B. & A.* 619. *Norton v. Pickering*, 8 *B. & C.* 610. *and see Clegg v. Cotton*, 3 *B. & P.* 250. *ante*, *p.* 222.

Not excused, in an action against the indorser, because the drawer had no effects in the hands of the drawee.] It is no answer to the want of notice in an action against an indorsee, that the drawer had no effects in the hands of the drawee. Thus where in such an action, the plaintiff's counsel offered to show that the drawee had no effects of the drawer in his hands at the time, the court were of opinion that as between these parties it would make no difference. *Goodall v. Dolley*, 1 *T. R.* 713. So where in an action against an indorser who had received no notice of dishonor, the plaintiff's counsel attempted to cure this negligence by shewing that the drawer had no effects in the hands of the drawees, Lord Kenyon was of opinion that this circumstance would not avail the plaintiffs. That rule only extended to ac-

tions brought against the drawer; the indorser was at all times entitled to notice, for he had no concern with the accounts between the drawer and the acceptor. The plaintiffs then proved a letter of the defendant's, acknowledging the debt and promising to pay, on which evidence he recovered a verdict. *Wilkes v. Jacks, Peake,* 202 *b.*

But in *Lisson v. Tomlinson,* 1805. *Selw. N. P.* 324. *4th ed.* Lord Ellenborough ruled, on the authority of *De Bert v. Atkinson,* 2 *H. Bl.* 336. *see post,* that where the indorser has not given any consideration for a bill, and knows at the time that the drawer has not any effects in the hands of the drawee, he (the indorser) is not entitled to notice as a *bonâ fide* holder for a valuable consideration would be. But where the indorser had no notice of the drawer having no effects in the hands of the drawee, he was held entitled to notice, as already stated. *Brown v. Maffey,* 25 *East,* 216. *ante, p.* 2*and see* 27, *Leach v. Hewett,* 4 *Taunt.* 731. *ante, p.* 196.

Not excused by the insolvency or bankruptcy of the drawee or other party.] The holder of a bill is not excused from giving notice of its dishonor, though the drawee or acceptor has become insolvent or bankrupt, and the other parties to the bill were aware of that fact. In an action against the drawer of a bill, to whom no notice of dishonor had been given, the acceptor, being called as a witness, stated, that when the bill was drawn he was indebted to the drawer in more than the amount of the bill; but that he then represented to the drawer that it would not be in his power to provide for the bill, and that it was, therefore, understood between them that the drawer should provide for it: Lord Kenyon, notwithstanding, held, that notice was necessary. *Staples v. Okines,* 1 *Esp.* 332. So where B. for the accommodation of A., who was considerably indebted, indorsed a note made by A., and payable at D.'s, and shortly before it became due desired D. to send it to him, and said he would pay it; it was held, that B. was, notwithstanding, entitled to notice of the dishonor of the note. *Per Eyre, C. J.* "It sounds harsh, that a known bankruptcy should not be equivalent to a demand or notice; but the rule is too strong to be dispensed with." *Nicholson v. Gouthit,* 2 *H. Bl.* 609. So in *Russell v. Langstaff, Dougl.* 497. 515, *4th ed.* it was said, *arguendo,* that it had been frequently ruled at Guildhall, that it is not an excuse for not making a demand on a note or bill, or for not giving notice of non-payment, that the drawer or acceptor has become bankrupt, as many means may be resorted to of obtaining payment, by the assistance of friends or otherwise. *See also Whitfield v. Savage,* 2 *B. & P.* 277. *Thackray v. Blackett,* 3 *Campb.* 164. *Ex parte Wilson,* 11 *Ves.* 412. The indorsers of a bill, which was dishonored, had received no notice of its dishonor, but knew that the drawer and acceptor were insolvent. The court held, that they were

discharged by the want of notice. *Per Lord Ellenborough*, "It is too late now to contend, that the insolvency of the drawer or acceptor dispenses with the necessity of a demand of payment or of notice of dishonor; and as to knowledge of the dishonor by the person to be charged on the bill, being equivalent to due notice of it given to him by the holder, the case of *Nicholson v. Gouthit* (*supra*), is so decisive an authority against that doctrine, that we cannot enter again into the discussion of it." *Esdaile v. Sowerby*, 11 *East*, 114.

The bankruptcy of the drawer or indorser of a bill will not, as it seems, excuse the giving of notice to him. In the case of *ex parte Moline*, 19 *Ves.* 216, Lord Eldon held, that notice of dishonor to the drawer of a bill, who had become bankrupt, before the appointment of assignees, was sufficient; that the bankrupt represented his estate until assignees were chosen, and that all that was requisite, therefore, was done. So under the peculiar circumstances of the following case, the court of K. B. held, that notice to a bankrupt drawer was necessary. One Rain, the drawer of certain bills, due in June, 1818, left his dwelling-house in April and absconded. On the 28th April a commission of bankrupt issued against him, and the assignees were chosen. The bankrupt's house remained open in the possession of the messenger under the commission, for some time after the bills became due. The acceptor, Lacklan, became bankrupt on 23d April, and the bills were dishonored; but no notice of the dishonor was given to the drawer, or left at his house. The holders had notice of the appointment of the assignees of the drawer before the bill became due; but no notice was given to them. The court held, that by the want of notice the estate of the drawer was discharged. *Per Cur.* "When a bill is dishonored, it is the duty of the holder to use due diligence to give notice to such of the parties to the bill, as would be entitled to a remedy over upon it, if they took it up, and the holder makes the bill his own as against those parties, and loses his remedy upon the bill against them by neglecting to use such diligence. It is no excuse, that the chance of obtaining any thing upon the remedy over was hopeless, that the person or persons against whom that remedy would apply, were insolvent or bankrupts, or had absconded. Parties are entitled to have that chance offered to them; and if they are abridged of it, the law, which is founded upon the usage and custom of merchants, says they are discharged. The bankruptcy, therefore, of Lacklan is no excuse for the want of due diligence, if such want exist in this case; but the question must be answered as it would have been had Lacklan continued solvent. Had Lacklan been solvent, and Rain's assignees had been apprised of the dishonor, they might at all events have pressed Lacklan to pay; and had they thought fit to take up the bill, they might have sued him. Of these opportunities in this case, they have

been deprived, and the question is, whether they have been deprived by the want of that diligence, which they had legally a right to expect from the holders. It is not necessary to decide in this case, whether in the event of the bankruptcy of a party intitled to notice, the holder is bound to endeavour to find out his assignees; nor is it necessary to say what would be the case, if such a party's house were shut up, and there were no means afforded there of discovering him or his representatives: for in this case the bankrupt's house continued open, the agent of his representatives, the messenger, who was also in some degree, his representative, was there, and a notice there would have reached the assignees, and have given them the power of considering, whether they should have taken any and what steps against Lacklan. In a very excellent modern publication on the law bills of exchange, combining the Scotch and English law upon the subject, *Thomson*, 535, it is laid down, that in case of the bankruptcy of the drawer, or of an indorser, notice must still be given to the bankrupt, "or to the trustee vested with his estate for behoof of his creditors;" and he refers (amongst other decisions) to the case *ex parte Moline* (*supra*). Whether this be universally and in all cases true, it is not now necessary to decide; all the present case requires is this, that where the bankrupt's house continues open, and an agent of the assignees there, notice is essential, and a neglect to give it bars the holder's claim against the bankrupt's estate. The bills, therefore, were not proveable under the commission issued against the drawer." *Rhode v. Proctor*, 4 *B. & C.* 517.

Whether excused in case of the known insolvency of the maker of a note.] It was held in one case, that where the payee of a note lent his name to the maker for his accommodation, knowing at the time that the maker was insolvent, he was not entitled to notice of its dishonor. *Per Eyre, C. J.* "Consider on what ground an early demand is in general required. It is because, if any delay takes place, the effects may be gone out of the hands of the acceptor; and if the holder chooses to wait, he does it at his own risque. But apply this rule to the case of known insolvency: what does it signify to the person who is liable in the second stage, at what time the demand is made upon the drawer, who was known to be insolvent from the beginning?" *De Berdt v. Atkinson*, 2 *H. Bl.* 336. Upon this case it has been remarked, that inasmuch as the payee would, upon paying the note, have a clear right of action upon it against the maker, it would seem that he is entitled to notice of dishonor, or to make non-presentment in time a ground of defence; and it is added, that the court appears to have proceeded on a mis-application of the rule, which obtains as to accommodation acceptances; in those cases the

drawer being himself the real debtor, acquires no right of action against the acceptor by paying the bill, and suffers no injury from want of non-payment by the acceptor; but that in this case the maker was the real debtor, and the payee a mere surety, having a clear right of action against the maker upon paying the note, and therefore, entitled to notice, to enable him to exert that right. *Bayley*, 248. *See* 4 *Taunt.* 733. These observations are supported by the cases of *Nicholson v. Gouthit*, 2 *H. Bl.* 609; *ante, p.* 229. and *Smith v. Becket*, 13 *East*, 187. In the latter case, the defendant, the payee of a note, indorsed it for accommodation of Canning the maker, who had lately stopped payment, which was known to the defendant. Canning deposited the note with the plaintiffs, who advanced to more than the amount of the note; which advance was afterwards renewed whithout any communication with the defendant. No notice of the dishonor of the note was given; but the court held, that notice was necessary under the circumstances of this case, and that the plaintiffs were not entitled to recover, particularly as it appeared, that there had been a renewal of the advance made by them to Canning, without any communication of it to the defendant; and at the last, if notice had been given by the plaintiffs to the defendant, that they would not trust Canning any longer, the defendant might have taken measures for his own security. *Smith v. Becket*, 13 *East*, 187. But where the payee of a note, who indorsed it for the accommodation of the insolvent maker, took effects of the insolvent to the amount, no notice of dishonor being given to the defendant; Buller, J. said, that it was undoubtedly necessary that an indorser of a note should have notice of the default of the maker in payment, but that was only the case where there were effects of the indorser in the maker's hands, and *that he might suffer from the want of such notice;* but where there were no effects no notice was necessary; and he ruled that the plaintiff was entitled to recover. *Corney v. Da Costa*, 1 *Esp.* 302. *See Cory v. Scott*, 3 *B. & A.* 617; *ante, p.* 228.

Not excused—by an agreement, not appearing on the face of of the note, that it shall not be enforced.] In an action against the indorser of a note, it appeared that the note had been indorsed by the defendant for the accommodation of the maker, and that no notice of dishonor had been given. In answer to this defence, the plaintiffs tendered, as a waiver of such notice by the defendant, evidence of his admission, that he knew and expected that the payment of the note was not to be enforced until after the estates of the maker were sold, and then only in the event of the proceeds not being sufficiently productive; that such was the understanding when the note was given, and that the defendant only gave the note as a further and collateral se-

curity, for the express purpose of allowing time for the sale of the estates. This evidence was rejected by Gibbs, C. J. who directed a nonsuit, which the court of C. P. refused to set aside. *Per Dallas, J.* "It is said, that at the time when these notes were made and indorsed, it was mutually understood, that payment should not be enforced until the maker's effects were brought to sale, and that the plaintiffs entered into this contract with the defendant, with a full knowledge of all these circumstances. One thing is to be observed, if such were meant to be the understanding, it ought to have been expressed on the instrument; but it is not expressed; and, taking the instrument as it stands, it is a common promissory note, and requires that notice of dishonour should be given to the defendant, in order to give the plaintiffs a right to recover against him. But, it is said, notice was dispensed with by the understanding which existed between the parties, to which the answer is, that if parties mean to vary the legal operation of an instrument, they ought to express such variance; if they do not express it, the legal operation of the instrument remains. The effect of the evidence tendered, would be, to vary the note in question, and to control its legal operation, and such evidence I think is inadmissible." *Free v. Hawkins*, 8 *Taunt.* 82. *Holt*, 550. *S. C.*

Whether excused in case of accident.] Whether notice of dishonor is excused in cases of inevitable accident, has not been determined. In *Hilton v. Shepherd*, 6 *East*, 16. (*n.*) Lord Kenyon said, that whether due diligence had or had not been used, was a question for the jury to consider, under all the circumstances of *accident*, necessity, and the like. If accident should be held to constitute an excuse, it must appear to have happened without any default on the part of the person whose duty it was to give notice. Thus, a mistake in the direction of a letter will not furnish an excuse. *Esdaile v. Sowerby*, 11 *East*, 114. In an action by the eleventh indorsee of a bill against the eighth indorser, it appeared, that in due time, on the 4th of September, the bill, with notice of dishonour, was left at the house of the tenth indorser, R. Bennett, in a letter, addressed to him. That, in consequence of the dangerous illness of his wife at a distant place, he had on the 1st September left his house in the care of a boy, who had no authority to open letters, intending to return on the 3d of September, but that, in consequence of the increasing dangerous illness of his wife, he did not return till after the 8th of September, on which day his brother opened the letter and immediately gave notice of the dishonor of the bill to the plaintiff, who paid it, and then called upon the defendant, who insisted that he was discharged for want of earlier notice. It was urged for the plaintiff, that the dangerous illness of Bennett's wife

excused his absence from home, and the delay in giving notice of the dishonor, and that as the dishonor of a bill is contrary to the contract and expectation of the parties, there is no reason for requiring an indorser to be in the way, or to appoint an agent in his absence, to provide for such an event. But Lord Ellenborough ruled, that these circumstances constituted no excuse for the delay in giving notice. A case was reserved upon another point. *Turner v. Leach, H. T.* 1818, *Chitty*, 275. *5th ed.* 213. *7th ed.* 4 *B. & A.* 451. (*Note* 52.) The accidental destruction of the bill will not excuse the want of notice. *Thackray v. Blackett*, 3 *Campb.* 164.

Excused, by ignorance of the party's residence.] The giving of notice is excused, where the party who ought to give it is, after due enquiry, ignorant of the residence of the party to whom it ought to be given. In an action by the indorsee against the indorser of a bill, it appeared that the plaintiff did not know the residence of the defendant till the day when notice was given, being several days after the time when, in due course, it ought to have been received. The holder knew the residence of the acceptor in London, and of the drawer in Liverpool. Lord Ellenborough left it to the jury to say, whether the plaintiff had used due diligence in acquiring the knowledge of the defendant's place of residence. The jury found a verdict for the plaintiff, and the court refused a new trial, saying, that it was a question proper to be left to the jury, and that they had decided it. *Bateman v. Joseph*, 12 *East*, 433. 2 *Campb.* 461. *S. C.* Several cases have arisen, as to what is to be considered due diligence in inquiring for the party's residence. In one case, it was held sufficient, on the dishonor of a promissory note, to make inquiry at the drawer's for the residence of the payee. *Sturges v. Derrick, Wight.* 76. In an action against the indorser, to whom no notice had been given, on the ground that his residence was unknown, it appeared that the plaintiff had only made inquiries on the subject at a house in the Old Bailey, where the bill was made payable by the acceptor. *Per Lord Ellenborough*, "Ignorance of the indorser's residence may excuse the want of due notice; but the party must shew that he has used reasonable diligence to find it out. Has he done so here? How could it be expected that the requisite information should be obtained where the bill was payable? Inquiries should nave been made of the persons whose names appeared upon the bill, and application might have been made to persons of the same name with the defendant, whose addresses are set down in the directory." *Beveridge v. Burgis*, 3 *Campb.* 562. In an action against the drawer of a bill, payable to his own order, and indorsed by him to Newman, and by him to Maberley, and by him to Chesterman, and by him to the plaintiffs, it appeared, that on the 23d

November the bill was presented and dishonored. On this day the plaintiffs were ignorant of the residences of the defendant and of Maberley, but on the 24th applied to Chesterman for the purpose of ascertaining the defendant's residence. Chesferman referred the plaintiffs to Maberley, who was not at home when the plaintiffs applied. On the following day the plaintiffs applied again to Maberley, and having learned from him the residence of the drawer, gave him notice. *Per Dallas, C. J.* " Where the places of abode, both of the acceptor and the drawer appear on the face of the bill, there the want of due notice may furnish an answer to an action against the drawer. But it has been decided, in the case of *Bateman v. Joseph, (supra,)* that ignorance of the place of residence of a prior indorser is a sufficient answer to an objection arising out of a want of due notice to him of the dishonor of the bill. I think, too, that the plaintiff used reasonable diligence to ascertain the residence of the defendant, but that question I will leave to the jury." The jury found for the plaintiffs. *Browning v. Kinnear, Gow* 81. Where the traveller of E. W. received a promissory note in the course of business, which he forwarded to his employer, and on the note being dishonored, the latter wrote to the traveller, to inquire from whom he received it; although no notice of dishonor was given until the traveller's answer was received, it was held good. *Per Cur.* " The general rule upon this is, that each party must give notice as soon as he reasonably can. Now, had this note been received by E. W. in payment of a debt, from a person who did not indorse it, all that is required by the law of merchants would be satisfied, by inquiring in due time of that person from whom he received it, and sending notice accordingly. The circumstance of the note having been received by the traveller of E. W. cannot make any substantial difference." *Baldwin v. Richardson,* 1 *B. & C.* 245. 2 *D. & R.* 285. *S. C.* The holder of a bill, due on the 4th of August, being ignorant of the residence of the indorser, addressed a letter to him at the place where the bill was drawn. The indorser did not reside there, and the letter was returned through the post office on the 24th of September. The holder then directed his attorney to use the utmost diligence to ascertain the place of residence, and on the 16th October the attorney received information of it. On the 17th he consulted his client, and on the 18th he wrote a letter to the indorser, giving him notice. It was held, that the attorney, like a banker, had a day to consult his employer, and that the notice was good. *Firth v. Thrush,* 8 *B. & C.* 387.

In an action against the drawer of a bill, to whom no notice of dishonor had been given, it was proved, that a few days before the bill became due, the defendant called at the countinghouse of the plaintiff, whom he knew to be the holder, and being asked the place of his residence said he had no regular

residence as he was living amongst his friends, and he would call and see if the bill was paid by the acceptor. Lord Ellenborough ruled, that this dispensed with notice, and threw upon the defendant himself the duty of inquiring if the bill was paid. *Phipson v. Kneller*, 4 *Campb.* 285. 1 *Stark.* 116. *S. C.*

Protest—when excused.] Where a foreign bill has been dishonored, and a party to it, with a knowledge of that fact, promises to pay it, such promise dispenses not only with notice, but with the protest. One Colbourne was the drawer of a foreign bill of exchange, and in lieu of evidence of notice and protest, the plaintiff proved, that after the bill became due, Colbourne was told that it was dishonored, and called upon to pay it, when he said, *that his affairs were at that moment deranged, but that he would be glad to pay it as soon as his accounts with his agent were cleared.* *Per Lord Ellenborough*, "By Colbourne's promise to pay he admits his liability: he admits the existence of everything which is necessary to render him liable. When called upon for payment of the bill, he ought to have objected that there was no protest; instead of that he promises to pay it. I must therefore presume, that he had due notice, and that a protest was regularly drawn up by a notary." *Gibbon v. Coggon*, 2 *Campb.* 188. In an action against the drawers of a foreign bill, the declaration stated, that the bill was presented for payment, which was refused, and that it was duly protested for non-payment. The proof in support of these averments was, that one of the defendants called at the plaintiff's counting-house after the bill became due, and said, *that it was regular; it was due from him and his partner; and he was come to make an arrangement for payment of the bill, with interest from the time it became due;* Lord Ellenborough considered, that the defendant's acknowledgment was a sufficient foundation from which the jury might infer the facts stated in the declaration. *Greenway v. Hindley*, 4 *Campb.* 52. In an action by the payee against the drawer of a bill of exchange, the declaration stated, that the defendant, on, &c. at St. Helena, to wit, at Westminster, drew the bill, &c. At the trial the bill was produced, dated at St. Helena, and not upon a stamp. The plaintiff proved the handwriting of the defendant as well as a subsequent promise by him to pay the bill. For the defendant, evidence was adduced, which tended to shew, that such promise, if any, was made without prejudice, and it was objected, that the declaration contained no averment of the bill having been drawn abroad, so as to enable the defendant to object to the want of a protest upon special demurrer; that it must therefore be presumed, that the bill declared on was an inland bill; and if so, the instrument produced would vary from that set out in the declaration, and if it was considered an inland bill, it was inadmissible for want of a stamp.

At the trial, Dallas, C. J. was of opinion, that the subsequent promise to pay might amount to a waiver of those objections, and supersede the necessity of any further proof as to the presentment or protest for non-payment, those facts not having been averred in the declaration. The jury found for the plaintiff, and the court of C. P. refused an application to enter a nonsuit. *Per Richardson, J.* "Even if the instrument in question had been properly declared on as a foreign bill, it has been decided in the case of *Rogers v. Stevens,* (*ante, p.* 216,) that a promise to pay after a bill or note becomes due, will dispense with proof of presentment and notice of dishonor. So it will dispense with the proof of protest, as it will amount to an admission on the part of the defendant, that the plaintiff had a right to resort to him on the bill." *Patterson v. Beecher,* 6 *B. Moore,* 319. It seems that inevitable accident, as it excuses want of presentment at the day, will also excuse want of protest. (*See Note* 52.)

CHAPTER X.

OF THE PAYMENT OF BILLS AND NOTES.

By whom.
In general.
Bankrupts.
To whom.
In general.
Bankrupts.
In cases of lost and stolen bills.
In cases of forgery.
Within what time.
By taking a check from the acceptor.
By appropriation.
What amount.
Receipt and getting back the bill.
Supra protest.

By whom—in general.] Payment of a bill may be made either by the acceptor, drawer, or indorser, or by a person, *supra protest*, for the honor of one of those parties. Until a bill is paid by or on the behalf of the *acceptor*, it continues negotiable and may be issued without any fresh stamp. *Ante, p.* 135. Thus where a bill payable to the drawer's own order is taken up by him, it may be reissued ; *Callow v. Lawrence*, 3 *M. & S.* 95 ; though it is otherwise where the bill is payable to a third person, for then that person might be twice charged. *Beck v. Robley*, 1 *H. Bl.* 89. (*n.*) So where a note has been taken up by an indorser he may reissue it. *Gomez Serra v. Berkley*, 1 *Wils.* 46. *See ante, p.* 135.

Where the acceptor of a bill or the maker of a note delivers money to his agent to retire the bill or note, and the agent tenders the money to the holder, on condition of having the bill or note delivered up, the bill being mislaid and the money consequently not paid, the acceptor or maker still remains liable after the bankruptcy of the agent with the money in his hands. *Dent v. Dunn*, 3 *Campb.* 296. Payment of a note by the bail of the maker is a discharge to the indorser. *Hull v. Pitfield*, 1 *Wils.* 46.

By whom—bankrupts.] All payments really and *bonâ fide* made or which shall hereafter be made by any bankrupt, or by any person on his behalf, before the date and issuing of the commission against such bankrupt, (such payment not being a fraudulent preference of such creditor,) shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person so dealing with the said bankrupt had not at the time of such payment by such bankrupt, notice of any act of bankruptcy by such bankrupt committed. 6 *Geo.* 4. *c.* 16. *s.* 82.

To whom—in general.] Payment should always be made to the proprietor of the bill, and if made to the payee will be inoperative should he have ceased to be the holder, and should the acceptor have notice of that fact. *Poth. pl.* 142. 3. 164. Payment to one of several partners will be good. *Duff v. East India Co.* 15 *Ves.* 213. So will payment to an authorised agent; and the production of a bill by a person professing to be the agent of the holder, will be *primâ facie* evidence of agency. *Owen v. Barrow*, 1 *Bos. & Pul. N. R.* 103. If the proprietor die, payment should be made to his personal representative; *Poth. pl.* 166. *Bayley*, 255; and payment to an executor under a forged will, the holder being actually dead, is valid. *Allen v. Dundas*, 3 *T. R.* 125. When a bill is payable to A. or order, to the use of B. payment should be made to A., for the right to sue is in him. *Evans v. Cramlington*, *Carth.* 5. *ante*, *p.* 24. If the holder be an infant, payment should be made to his guardian, *Poth. pl.* 166. *Bayley*, 255, though if the bill be beneficial to the minor, payment to him would, it is said, be valid. *Ibid.* In case of a married woman, payment should be made to her husband, *Bayley*, 256. *Poth. pl.* 167, for he has the power to sue upon and transfer the bill; *ante*, *p.* 58.

The production of a bill of exchange is in general sufficient to warrant payment of the amount to the party who produces it. *Per Mansfield C. J. Owen v. Barrow*, 1 *N. R.* 102. Where a bill is indorsed to a person merely for the purpose of receiving payment for the indorser, and the authority given to the indorsee is afterwards revoked, either by the party himself or by

operation of law, as by death, payment to the indorsee will not be a good discharge, if the person making it had notice of the revocation. *Mar.* 72. 3. *Poth. pl.* 168. *See Tate v. Hilbert*, 2 *Ves. Jun.* 118. Payment to an attorney while an action is subsisting is good, but otherwise to his clerk, who shews no other authority than his master's orders to receive it. *Per Lord Kenyon, Coore v. Callaway*, 1 *Esp.* 115. Nor is payment to the attorney's agent good. *Yates v. Freckleton, Dougl.* 623. 4*th Ed.* 600. It is incumbent on the asceptor to satisfy himself of the validity of the title of the holder. Certain bills of exchange, drawn upon and accepted by the East India Company in favor of W. Hope in India, were afterwards indorsed to Davies and Card, by S. Card as agent for Hope, under a supposed authority given by a power of attorney, which was seen and inspected by the acceptors. Davies & Card indorsed them to the defendants, as their bankers, in order that the latter might present them for payment when due. The defendants put their names on the back of the bills, presented them for payment, and received the amount, which they soon afterwards paid over to Davies & Card. It was then discovered that the power of attorney given by Hope, did not authorise his agent to indorse the bills, and the administrators of Hope, in an action against the acceptors, recovered the amount of them. The acceptors then sued the defendants on a supposed undertaking that they as holders were entitled to receive the amount of the bills. The jury found that the plaintiffs paid the bills on the faith of the power of attorney, and not of the indorsement by the defendants, and that the latter paid over the money before they had notice of the invalidity of the first indorsement. It was held under these circumstances that the plaintiffs were not entitled to recover. The plaintiffs, though they had the means of ascertaining the extent of Card's authority, yet thought fit to pay the money. *East India Co. v. Tritton*, 3 *B. & C.* 280. 5 *D. & R.* 214. *S. C.* (*Note* 53.)

To whom—bankrupts.] All payments really and *bonâ fide* made or which shall hereafter be made to any bankrupt, before the date and issuing of the commission against such bankrupt, shall be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, and such creditor shall not be liable to refund the same to the assignees of such bankrupt, provided the person so dealing with the said bankrupt had not at the time of such payment to such bankrupt, notice of any act of bankruptcy by such bankrupt committed. 6 *Geo.* 4. *c.* 16. *s.* 82.

To whom—in case of lost and stolen bills, &c.] The cases relating to the *transfer* of bills or notes which have been lost or stolen, will be collected in a subsequent chapter. *Post, Chap.* XV. Where a bill or note is lost or stolen, and when due is presented

for payment by the person losing or stealing it, the acceptor or party paying it will be justified in making payment to the person by whom it is presented, provided there be no circumstances in the transaction which should have excited the suspicion of a prudent man. Thus it is said by Lord Mansfield, that if a bill payable to bearer be lost, and found by another person in the street, who carries it to a banker who drew it, and he pays, it is a good payment, for it is the owner's fault that he lost it. *Smith v. Shepperd*, 16 *Geo.* 3. *Chitty*, 193. 5*th Ed.* 149. 7*th Ed.* And if such a bill is in the hands of a *bonâ fide* holder for value, who has received it under circumstances which would not have excited the suspicion of a prudent man, as such holder would be entitled to sue the acceptor, the latter will be justified in making payment. *Pierson v. Hutchinson*, 2 *Campb.* 211. *Bevan v. Hill*, 2 *Campb.* 381. *post.* But payment by a banker of a lost check, on the day before it bears date will not be good, for it is contrary to the usual course of business to pay drafts before the day on which they are dated. *Da Silva v. Fuller*, *Sitt. in Lond. E.* 1776. *Chitty*, 192. 5*th Ed.* If a banker has been guilty of any want of due caution in paying a check which has been lost or stolen, such payment will not be good against the payee of the check, as in the following case. A customer drew a check upon his banker, but finding the sum incorrect, tore it into pieces and threw it from him, and drew another check which was paid. Five days afterwards the first check was presented for payment by a person unknown. The four pieces into which it had been torn were neatly pasted together upon another slip of paper, but the rents were quite visible, and the face of the check was soiled and dirty. The banker's clerk paid it however without making any inquiries. Lord Ellenborough was of opinion that under these circumstances, the banker was not justified in paying the check. *Scholey v. Ramsbottom*, 2 *Campb.* 485. Where a banker, at whose house a bill, which had been lost, (of which he had notice), was made payable by the acceptor, his customer, by mistake discounted the bill, and after charging his customer with the amount, wrote a discharge on the bill and delivered it to his customer; it was held, that the person who had lost the bill might maintain trover for it against the banker, for that it was the same as if he had carried it to the acceptor to be paid, and had obtained payment for it knowing it to be a lost bill. *Lovell v. Martin*, 4 *Taunt.* 799. If a bill is only transferable by indorsement, as where it is specially indorsed by the payee, and is not indorsed by the special indorsee, the holder of such a bill, if lost or stolen, cannot sue the acceptor upon it, and the latter therefore will not be justified in making payment to a person who has received the bill after it has been lost or stolen, even though he be a *bonâ fide* holder for value. *See Mead v. Young*, 4 *T. R.* 32. *Long v. Baillie*, 2 *Campb.* 214. (*n.*) *post*,

Chapter XV. So in an action by bankers to recover the amount of a bill made payable at their banking house and paid by them, Lord Ellenborough ruled, that it was necessary for them not only to prove the hand-writing of the defendant, the acceptor, but also that of the payee, observing, that if the acceptor of a bill makes it payable at a banker's, he requests the latter to pay it only to the payee or his order, and not to any person who presents it, and that if the banker pays it without ascertaining the indorsement to be genuine, it is at his own risk. *Forster v. Clements*, 2 *Campb.* 17.

To whom — in cases of forgery.] Where the acceptor of a forged bill pays it, and is guilty of any negligence, or want of due caution in making such payment, he cannot recover the money so paid from the innocent party to whom he paid it, notwithstanding the general rule, that money paid under a mistake of facts may be recovered. A bill of exchange, the name of the drawer of which was forged, was indorsed to the defendant without notice, and for value, who presented it to the drawee, the plaintiff, who paid it. Another bill, purporting to be drawn by the same person, but also forged, was accepted by the plaintiff, and afterwards indorsed in the like manner, to the defendant, who presented it to the acceptor, the plaintiff, by whom it was paid. An action for money had and received having been brought, the court of K. B. held, that it could not be maintained. *Per Lord Mansfield*, "Here was no fraud; no wrong. It was incumbent on the plaintiff to be satisfied that the bill drawn upon him was the drawer's hand, before he accepted or paid it. But it was not incumbent on the defendant to inquire into it. Here was notice given by the defendant to the plaintiff of a bill drawn upon him, and he sends his servant to pay it, and take it up. The other bill he actually accepts, after which acceptance the defendant innocently and *bonâ fide* discounts it. The plaintiff lies by for a considerable time after he has paid these bills, and then finds out that they were forged, and the forger comes to be hanged. He made no objection to them at the time of paying them; whatever neglect there was was on his side. The defendant had actual encouragement from the plaintiff himself, for negotiating the second bill, from the plaintiff's having, without any scruple or hesitation, paid the first. And he paid the whole value, *bonâ fide*. It is a misfortune which has happened, without the defendant's fault or neglect. If there was *no* neglect in the plaintiff, yet there is no reason to throw off the loss from one innocent man upon another innocent man; but in this case, if there was any fault or negligence in any one, it certainly was in the plaintiff, and not in the defendant." *Price v. Neale*, 3 *Burr.* 1355. 1 *W. Bl.* 390. *S. C.*

In an action for money had and received, it appeared, that

the plaintiffs were bankers in London, with whom Evans kept cash. The defendants were bankers at Tunbridge, and were *bonâ fide* holders, for value, of a bill drawn by Temple on Evans, in favor of himself, indorsed by him to Le Souef, and by the latter to the defendants. The acceptance of Evans, payable at Smith & Co.'s, the plaintiffs, was forged. The defendants indorsed the bill to Spooner & Co. their agents in London, for the purpose of procuring payment, and the plaintiffs paid it when due to Spooner & Co. who paid it on account to the defendants. A verdict was found for the plaintiffs, subject to a case, and the court of C. P. *dissentiente Chambre, J.* ordered a nonsuit to be entered. *Per Dallas, J.* "I consider the payment of this bill as a want of due caution on the part of the plaintiffs. Is it productive of no injury to any of the parties to the bill? Suppose Smith & Co. had not paid it, it would have been immediately returned by Spooner, and by him to Le Souef, the indorser, and it might have been recovered or put in suit. But the effect of the delay has been, to give him an extended credit; and how am I able to say that his situation in the intermediate time may not have undergone such a change, as to render him incapable of paying what he could have paid upon proper notice and demand. The ground on which I rest my opinion, and to which I wish to confine it, is, the want of due caution in having paid the bill, the effect of which has been, to give time to different parties, which the plaintiffs were not authorised to do." *Chambre, J.* was of opinion, that the case came within the general rule of money paid under mistake, and not only under a mistake, but under a representation made to the plaintiffs by the defendants, who indorsed the bill with that forged acceptance on it, that the plaintiffs were required and directed so to pay it, by the persons whose agents they were in money transactions. He thought that it was not a case of gross negligence in the plaintiffs. *Heath, J.* and *Gibbs, C. J.* concurred with *Dallas, J.* *Per Gibbs, C. J.* "A narrow and particular ground is with me conclusive on this case. If the acceptance had been genuine, and the plaintiffs had refused payment, the defendants had their remedy against the supposed acceptor, or if they failed to obtain the amount from him, they had their remedy against the prior parties on the bill. The acceptance carried with it an order on the bankers of the supposed acceptor to pay the money: it purported to be an order of Evans, whose bankers the plaintiffs were. It was incumbent on them to see to the reality of that order before they obeyed it; and if, by obeying it, they are sufferers, they ought not to throw on another a loss accruing without fault of his. See the circumstances! The defendants present the bill for payment, and it is paid to them. The money remained in their hands, without demand being made on them for it, from the 23d of April to the 30th of April; the forgery being then discovered,

the plaintiffs demand it back from the defendants. If the plaintiffs had originally refused to pay this money, the holder would immediately have given notice to the drawer, and to the immediate indorser, which would have been transmitted to the first indorser and drawer. In consequence of the bill being paid, the defendants continued to have the money in their hands till the 30th of April. I think it was then too late for the defendants to give notice to the prior parties; and, by not having given such notice, they lost their remedy against those parties. If a person, liable on a bill, does not receive notice within a reasonable time, he is discharged for want of such notice. Here *Temple* was discharged: by whose default? By the plaintiffs'. The defendants, while the bill continued paid, could not have given notice to him; for the bill was not then dishonored; and as the defendants have lost that opportunity by the negligence of the plaintiffs, the latter cannot recover back the money from the former. I have put the case on the express point, that, by the acts of the plaintiffs, the defendants are put in a worse situation; but I do not mean hereby to express my dissent from the larger ground on which the case has been put by my brothers *Heath* and *Dallas*; but I think the ground on which I have put it, is alone a sufficient answer to all the arguments that have been used, and is sufficient to warrant us in giving judgment of nonsuit." *Smith v. Mercer*, 6 *Taunt.* 76.

Where a check, drawn by a customer upon his banker, for a sum of money described in the body of the check in words and figures, was afterwards altered by the holder, who substituted a larger sum for that mentioned in the check, but in such a manner, that no person, in the ordinary course of business, could observe it, and the banker paid to the holder this larger sum, it was held by the court of K. B. that the banker could not charge the customer for any thing beyond the sum for which the check was originally drawn. *Per Bayley, J.* "The banker, as the depositary of the customer's money, is bound to pay, from time to time, such sums as the latter may order. If, unfortunately, he pays money belonging to the customer, upon an order which is not genuine, he must suffer, and to justify the payment, he must shew that the order is genuine, not in signature only, but in every respect. This was not a genuine order, for the customer never ordered the payment of the money mentioned in the check." *Hall v. Fuller*, 5 *B. & C.* 750. 8 *D. R.* 464. *S. C.*

But where the party paying upon a forged instrument has not been guilty of any want of due caution, which in consequence of the character he fills, he is bound to exercise, and has not by his conduct affected the right of any other parties to the instrument, he may in general recover back the money paid by him as money paid by mistake. Thus where a person discounted

a forged navy bill for another who passed it to him without knowledge of the forgery, it was held by the court of C. P. that the party discounting it was entitled to recover back the money as money had and received to his use on failure of consideration. *Per Gibbs, C. J.* "In the present case the navy bill is not such as it purported to be, and therefore the plaintiff is entitled to recover. A case somewhat similar very frequently occurs in practice, on which I should not rely as governing the law, but that it is said by my brother Lens to be sanctioned on the authority of a case so decided at *Nisi Prius* by Mansfield, C. J. namely, where forged notes are taken. The party negotiating them is not and does not profess to be answerable that the Bank of England shall pay the notes, but he is answerable for the bills being such as they purport to be." *Jones v. Ryde*, 5 *Taunt.* 488. 1 *Marsh.* 157. *S. C.* A similar case to *Jones v. Ryde* was argued on a subsequent day in the same term, on the forgery of a victualling bill, which the Victualling Office, on whom it was drawn, had paid before the forgery was discovered, and Pell, Serjt. contended that that circumstance identified the case with *Price v. Neale*, 3 *Burr.* 1534. *ante, p.* 242; but the court held it was distinguishable from that case, but not from *Jones v. Ryde*. *Bruce v. Bruce*, 5 *Taunt* 495. 1 *Marsh.* 165. *S. C.* The case of *Bruce v. Bruce* was recognised and acted upon in the case of *Wilkinson v. Johnston*, 3 *B. & C.* 428. Certain bills purporting to bear the indorsement of Heywood & Co., of Manchester, were presented when due in London and dishonored. Two days after the bills were dishonored, the notary (employed by Smith & Co., the agent of the defendants), who had presented them, carried them to the plaintiffs, who were the town agents of Heywood & Co., and who paid the same to the defendants for the honor and on the account of Heywood & Co., and struck out the indorsements subsequent to the names of Heywood & Co. Immediately after the payment, it was discovered that the names of the drawers and acceptors, and of Heywood & Co. were forgeries. On the same day the plaintiffs gave notice to Smith & Co., and to the defendants, that the bills were forgeries, and informed them that the indorsements subsequent to the name of Heywood & Co. had been cancelled by mistake. A verdict was found for the plaintiffs, subject to a case for the opinion of the court of K. B. who held that the plaintiffs were entitled to recover. After stating the cases of *Price v. Neale (supra)*, and *Smith v. Mercer (supra)*, *Abbott, C. J.* who delivered the judgment of the court, thus proceeded: "If we compare the facts of the present case with those of the two cases before mentioned, we shall find some important difference. The plaintiffs were not the drawees or acceptors of the bills, nor the agents of any supposed acceptor. They discovered the mistake in the morning of the day they made the payment, and gave notice thereof to the defendants in time to enable them to give notice

of the dishonor to the prior parties, which was accordingly given. The plaintiffs were called upon to pay for the honor of Heywood & Co. whose names appeared on the bills among other indorsers. The very act of calling upon them in this character was calculated in some degree to lessen their attention. A bill is carried for payment to the person whose name appears as acceptor, or as agent of an acceptor, entirely as a matter of course. The person presenting very often knows nothing of the acceptor, and merely carries or sends the bill according to the direction that he finds upon it, so that the act of presentment informs the acceptor or his agent of nothing more than that his name appears to be on the bill, as the person to pay it; and it behoves him to see that his name is properly on the bill. But it is by no means a matter of course to call upon a person to pay a bill for the honor of an indorser, and such a call, therefore, imports on the part of the person making it, that the name of a correspondent, for whose honor the payment is asked, is actually on the bill. The person thus called upon ought certainly to satisfy himself that the name of his correspondent is really on the bill, but still his attention may reasonably be lessened by the assertion, that the call itself makes to him *in fact*, though no assertion may be made *in words*. And the fault, if he pays on a forged signature, is not wholly and entirely his own, but begins at least with the person who thus calls upon him. And though, where all the negligence is on one side, it may perhaps be unfit to inquire unto the quantum, yet where there is any fault in the other party, and the other party cannot he said to be wholly innocent, he ought not, in our opinion, to profit by the mistakes, into which he may by his own prior mistake have led the other; at least, if the mistake is discovered before any alteration in the situation of any of the other parties, that is, whilst the remedies of the parties entitled to remedy are left entire, and no one is discharged by laches. Further, it is not easy to reconcile the opinion of some of the judges in *Smith v. Mercer*, (*supra*), with the prior judgment of the same court in *Bruce v. Bruce*, (*supra*). That was the case of a victualling bill, of which the sum was altered and enlarged, and in this alteration the forgery consisted. The whole sum was paid at the victualling office, when the bill was presented by the Bank of England, but the forgery being discovered, the bank paid back the difference, and then called upon their customer, the plaintiff, who repaid the bank, and brought his action against the defendant, from whom he had received the bill in its altered state. Now, if the payment of the whole sum at the victualling office, could not by law be rescinded on the ground of mistake, the refunding of part by the bank, and afterwards by the plaintiff, was an act done in their own wrong, and consequently not binding upon the defendant, nor giving a right of action against him. We think the present case approaches in

principle nearer to that of *Bruce v. Bruce* than to either of the other two. We think the payment in this case was a payment by mistake and without consideration to a person not wholly free from blame, and who ought not, therefore, in our opinion, to retain the money, unless the act of drawing the pen through the names of the other indorsers will have the effect of discharging them, and thereby deprive the defendants of their right to resort to them; which brings me to the second question in this cause." *Wilkinson v. Johnston*, 3 *B. & C.* 428. *Vide ante*, *p.* 139. In an action for money had and received, it appeared that the plaintiffs, who were bankers, had discounted for the defendants, who were bill brokers, a bill of exchange, which the defendants did not indorse. The bill purported to be drawn by Lunn, and to be accepted payable at the plaintiffs' house by Norman & Co. who were customers of the plaintiffs. The names of the drawers and acceptors were forgeries. A witness was called for the defendants to prove that the latter were merely agents, and had paid the money. *Per Abbott, C. J.* "The only question of fact is whether the defendants did pay over the money in the manner stated. I think, however, that the plaintiffs are at all events entitled to a verdict, being of opinion in point of law that even if the money was paid over, the defendants are nevertheless liable. If you take a bill without indorsement you cannot sue the person from whom you receive it, but then you take it *as a bill;* but here, in fact, the instrument on the faith of which the money was advanced turning out not to be a bill of exchange, being altogether a forgery, and that I take to be the distinction." *Fuller v. Smith*, *Ry. & Moo.* 49.

In the following case money paid by an indorser of a bill under a mistake of facts, was allowed to be recovered back. The bill was drawn in Ireland, upon the stamp there required by law, which was less in amount than the stamp required for such a bill drawn in England, but there was nothing on the face of the bill to shew that it had been drawn in Ireland. The holder in England neglected to present it for payment, and held it a month after it was due. The acceptor having become bankrupt, the holder applied for payment to his immediate indorser. The latter refused to pay it, alleging that the holder had made it his own by laches. The holder then threatened to sue him, alleging that the bill was void, on the ground that it was drawn on an improper stamp. The indorser inspected the bill, and finding the stamp was not that required for a bill of the same amount drawn in England, but ignorant of the fact that it had been drawn in Ireland, paid the amount to the holder. It was held that this was money paid in ignorance of the fact, and there being no laches imputable to the party who paid the money, he might recover it back in an action for money had and received. *Milnes v. Duncan*, 6 *B. & C.* 671.

Within what time.] Payment of a bill or note should not be made before it is due; if it be, it is at the peril of the person paying. *Marius, 4th Ed.* 31. *Bayley*, 260. *and see Burbridge v. Manners*, 3 *Campb.* 194. *ante, p.* 132. Payment may be demanded upon a foreign bill within any seasonable hours on the last day of grace, for the protest must be made on that day. *Tassell v. Lewis*, 1 *Ld. Raym.* 743. *Leftley v. Mills*, 4 *T. R.* 174. And so with regard to inland bills, payment may be demanded at any seasonable time on the last day of grace. *Per Buller, J. Leftley v. Mills*, 4 *T. R.* 174. *Burbridge v. Manners*, 3 *Campb.* 193. *ante, p.* 132. *Ex parte Moline*, 1 *Rose*, 303. But the acceptor has the whole of that day within which to make payment, and though he should in the course of that day refuse payment, which entitles the holder to give notice of dishonor, yet if he subsequently on the same day makes payment, the payment is good, and the notice of dishonor becomes of no avail. *Hartley v. Case*, 1 *C. & P.* 556. The drawer or indorser of a bill has a reasonable time for payment after notice of the dishonor, and within that time a tender by him is good. *Walker v. Barnes*, 5 *Taunt.* 240. 1 *Marsh.* 36. *S. C. ante, p.* 73. Payment after action brought will not prevent the plaintiff from proceeding for his costs. *Toms v. Powell*, 6 *Esp.* 40. 7 *East*, 536. *S. C.*

By taking a check for the acceptor.] Taking a check for the amount of the bill from the acceptor does not render the agent who presents the bill guilty of negligence, in case the check is dishonored. The defendants were the town bankers of the plaintiffs, and being employed by them to obtain payment of a bill, they took from the acceptor a check upon a banker in London for the amount, and delivered up to him the bill. The check was dishonored, and in an action for negligence the defendants insisted that they had only done what was usual in the ordinary course of trade as bankers, and therefore ought not to be answerable; Lord Kenyon being clearly of this opinion, the plaintiffs were nonsuited, and the court of K. B. refused a rule nisi to set aside the nonsuit. *Russell v. Hankey*, 6 *T. R.* 12. *see ante, p.* 9. But where on a bill becoming due the holder took a check from the acceptor, which was not paid, and delivered up the bill to him, in an action against the indorsers Lord Ellenborough ruled that the plaintiffs could not recover unless the bill was produced. *Powell v. Roach*, 6 *Esp.* 76.

By appropriation.] In general where money is paid by one man to another, without any specified appropriation of it by the payer, the receiver may apply it to any part of the account. *Clayton's case*, 1 *Meriv.* 585. But where no such application is made the payment goes in reduction of the earliest part of the account. Thus where one Jefferys paid to his creditor, the plain-

tiff, as a security, a promissory note made by the defendant for his accomodation, informing him that it was an accommodation note, and afterwards paid in money generally to the plaintiff, Lord Kenyon ruled that this payment must go in reduction of the plaintiffs' claim against the defendant on the note. *Hammersley v. Knowlys*, 2 *Esp.* 667. *Marsh v. Houlditch*, *Chitty*, 289. *7th ed.*

What amount.] When a bill is drawn here and payable in in a foreign country in foreign coin, the value of which is reduced by the government of that country, it is said that the bill shall be payable according to the value of the money at the time it was drawn. *Da Costa v. Cole*, *Skinn.* 272. (*Note* 54.) But it is said by Pothier, *pl.* 174. that the holder is bound to receive payment according to the course of exchange at the time the bill becomes payable. *See also Thomson on Bills*, 86.

Receiving part payment of a bill from the acceptor will not discharge any of the other parties provided the holder do not give time for payment of the remainder. *Gould v. Robson*, 8 *East*, 580. *Wahwyn v. St. Quintin*, 1 *B. & P.* 656. It is said that if the drawee has, on acceptance, engaged to pay only a part, and the holder has given notice of such partial acceptance to the other parties, he should, when the bill becomes due, receive of the drawee the sum for which he accepted, and cause a protest to be made for non-payment of the remaining sum. *Mar.* 68, 85, 86. *Chitty*, 380. *5th ed.*

Of the receipt, and getting back the bill.] By statute 43 Geo. 3. c. 126. s. 5. the party who pays money may demand a receipt, but a tender accompanied with a demand of a receipt is not good, *Glassott v. Day*, 5 *Esp.* 48, unless the party to whom it was tendered does not object to the demand of the receipt. *Cole v. Blake*, *Peake*, 179. The stamp act 55 *Geo.* 3 *c.* 184. *Schedule, part* 1. contains the following exemptions as to receipts on bills and notes: Receipts or discharges for any principal money due on exchequer bills: Receipts or discharges written upon promissory notes, bills of exchange, or drafts or orders for payment of money duly stamped, according to the laws in force at the date thereof, or upon bills of exchange drawn out of, but payable in, Great Britain: Receipts or discharges given upon bills or notes of the governor and company of the Bank of England: Letters by the General Post acknowledging the safe arrival of any bills of exchange, promissory notes or any other securities for money. Where a sum of money is paid on account, a receipt to that amount should be written on the bill, for if after such payment, the holder should transfer the bill without notice of it to an indorsee for a valuable consideration, he would be entitled to recover the whole amount of the bill. *Cooper v. Davies*, 1 *Esp.* 436. *Burbridge v Manners*,

3 *Campb.* 195. *ante, p.* 132. Where an action was brought by an indorser who had taken up a foreign bill and paid it, it was ruled by *Holt*, C. J. that it is necessary for the plaintiff to prove the payment of the bill by himself, by producing a receipt upon the protest, *Mendez v. Carreroon*, 1 *Ld. Raym.* 742, and as according to Lord Kenyon, *Scholey v. Walsby*, *Peake* 25, a receipt on the back of a bill *primâ facie* imports that it has been paid by the acceptor, it may be prudent in an indorser paying the bill to take a receipt to himself by name. *See Pfiel v. Vanbatenberg*, 2 *Campb.* 439.

When payment is demanded from the drawer or indorser, the holder of the bill should be prepared to deliver it upon payment. The drawer or indorser, says *Beawes*, *pl.* 70. cannot be compelled to make restitution, *unless the bill be returned*, with protest for non-payment; and again, *pl.* 74. no drawer or indorser is obliged to make restitution on sight of the protest alone, nor on sight of the protest and the unaccepted bill, when one of them has been accepted; but he is obliged to give a satisfactory security to the remitter, on his producing only the protest, and to make payment when this and the accepted bill are presented together. So it is said by *Eyre*, *C. J. Walwyn v. St. Quintin*, 1 *B. & P.* 658, that it is every day's practice for a dishonored bill to be thrown back upon the first indorser, each indorser taking back from his immediate indorser what he has paid on account of the bill, and at the same time delivering up the bill to him, and the latter again throwing it back on his immediate indorser, till at last it arrives at the first indorser. And so by *Lord Tenterden*, *C. J. Hansard v. Robinson*, 7 *B. & C.* 94, "The custom of merchants is, that the holder of the bill shall present the instrument at its maturity to the acceptor, demand payment of its amount, and upon receipt of the money deliver up the bill. The acceptor paying the bill has a right to the possession of the instrument for his own security, and as his voucher and discharge *pro tanto* in his account with the drawer." *and see post, Chapter* XV.

Supra protest.] When a bill of exchange, either inland or foreign, has been refused payment and protested, a third person may pay the same under protest for the honor of the drawer or indorser; so also may the person who made or suffered the protest. *Beawes*, *pl.* 50. But the acceptor of a bill cannot pay *supra protest* for the honor of an indorser, since he is generally liable in another capacity, viz. as acceptor. *Id. pl.* 51. Though it is said that when he has accepted on account of the drawer, who has not provided for the bill, he may suffer it to be protested, and afterwards pay it himself, or some other for him, under protest, to enable him to sue the drawer. *Id. pl.* 52. As the acceptor, however, would have a remedy in an action for money paid, such a course appears to be unnecessary.

With regard to the remedy of the party who pays *supra protest*, it has been ruled that he cannot recover against the person for whose honor he paid, if such payment is made before the bill is formally protested; it is not sufficient that the protest is drawn up before trial, and purports to have been made before the payment, if in fact it was not so. *Vanderwall v. Tyrrell, cor. Lord Tenterden*, 1 *M. & M.* 87. A party paying a bill *supra protest* for the honor of the drawers, has a remedy against the acceptor; *ex parte Wackerbarth*, 5 *Ves.* 574; unless he be an accommodation acceptor. *Ex parte Lambert*, 13 *Ves.* 179. *see post, Chapter* XIV. Where a person pays a bill for the honor of an indorser, he may sue the drawer. *Per Ld. Kenyon*, "Where a bill is taken up, the party who does so is to be considered as an indorsee paying full value for the bill, and as such entitled to all the remedies to which an indorsee would be entitled, that is, to sue all the parties to the bill." *Mertens v. Winnington*, 1 *Esp.* 113. *See Manning, Dig.* 89. *Beawes, pl.* 57. But paying a bill *supra protest* for the honor of the drawer, gives the party no right against the indorsers. *Beawes, pl.* 57. The party who pays a bill *supra protest*, may either sue on the bill itself, *Fairley v. Roch*, 1 *Lutw.* 891. *Mertens v. Winnington*, 1 *Esp.* 113, or in an action for money paid. *Smith v. Nissen*, 1 *T. R.* 269. *Vandewall v. Tyrrell*, 1 *M. & M.* 87. The cases relative to the discharge of parties by giving time for payment have been already stated. *Ante, Chapter* IV.

CHAPTER XI.

OF THE REMEDY UPON BILLS AND NOTES.

Form of action.
Common counts.
Counts on the consideration.
By whom.
Against whom.
Affidavit to hold to bail.
Form of.
Who may be bail.
In actions against married women.
Declaration.
Venue.
Statement of "custom of merchants," or "by force of the statute."
Date.
Place at which bill or note was made.
Payee, time and place of payment.
Sum payable.
Value received.
Parties.
Acceptance.
Indorsements.
Presentment.
Notice.
Promise.
Inspection of the bill.
Staying proceedings.
Judgment by default.

Form of action.] The usual action on a bill or note is a special action of assumpsit, but where there is a privity between the parties, an action of debt or *indebitatus assumpsit* may be maintained. Thus it has been held that an action of debt may be sustained by the payee against the maker of a promissory note expressed to be for value received. *Bishop v. Young*,

2 *B. & P.* 78. So it lies by the drawer against the acceptor of a bill payable to the drawer's order and expressed to be for value received. *Priddy v. Henbrey*, 1 *B. & C.* 674. So by an indorsee against his immediate indorser. *Stratton v. Hill*, 3 *Price* 253, 2 *Chitty*, 126. *S. C.* 1 *B. & C.* 681. But an action of *debt* will not lie on a promissory note payable by instalments till the last day of payment is passed. *Rudder v. Price*, 1 *H. Bl.* 547. *See Ashford v. Hand*, *Andr.* 370.

Of the form of action — common counts.] When the action is brought between *immediate* parties, the bill or note will be evidence of money paid, had and received, &c. so as to enable the plaintiff to recover under the common count, should he fail on the special count.

With regard to the count for *money lent*; it is said that a bill is *primâ facie* evidence of money lent by the payee to the drawer. *Bayley*, 286. So a promissory note is evidence of money lent by the payee to the maker; *Clarke v. Martin*, 2 *Ld. Raym.* 758. *Carter v. Palmer*, 12 *Mod.* 380; and also of money lent by the indorsee to his immediate indorser. *Kessebower v. Tims*, *B. R. E.* 22 *Geo.* 3. *Bayley*, 288. So where a note was in this form, "Received of Mr. Harris, the sum of 19*l.* on the behalf of my grandson, which I promise to be accountable for on demand,—S. H." it was held that it was good evidence of money lent, in an action by Harris. *Harris v. Huntbach*, 1 *Burr.* 373.

With regard to the count for *money paid*, it is said that a bill or note is *primâ facie* evidence of money paid by the holder to the use of the drawer or maker, *Bayley*, 287, and that an acceptance also is *primâ facie* evidence of money paid by the holder to the use of the acceptor. *Ibid.* But it is said by Eyre, C. B. that the presumptions of evidence which the writing affords, have no application to an assumpsit for money paid by the *payee* or *holder* of a bill to the use of the *acceptor*, and that it must be a very special case that will support such an assumpsit. "I can conceive a case," continues his lordship, "in which an acceptance might be evidence of money paid by the payee to the use of the acceptor. I may borrow of one man to lend to another, and if the person of whom I borrow the money pays it to my order into the hands of him to whom I mean to lend it, this might be a ground upon which a jury might find that the money was paid to my use." *Gibson v. Minet*, 1 *H. Bl.* 602. But where the indorser of a bill is sued by the holder and pays part, he may recover such payment from the acceptor in an action for money paid. *Pownal v. Ferrand*, 6 *B. & C.* 439. So the accommodation acceptor of a bill who has been compelled to pay it may maintain either a special action of assumpsit, *Young v. Hockley*, 3 *Wils.* 346, or an action for money paid, against the party, for whose accommodation he accepted; *see*

Cowley v. Dunlop, 7 *T. R.* 576; and a person who has paid a bill for the honor of a drawer or indorser may maintain the same form of action aginst the drawer or indorser. *Ante, p.* 251. Where the defendant and others drew a bill on the defendant alone in favor of a fictitious person (which was known to all the parties concerned in drawing the bill), and being indebted to A. B., delivered the bill to him, by whom it was indorsed for value to the plaintiffs, it was held that the latter might recover against the defendant on a declaration containing counts for money paid, and money had and received. *Tatlock v. Harris*, 3 *T. R.* 174. *ante, p.* 24. Money paid by the indorser to the holder of a bill stamped with the proper Irish stamp, in ignorance that the bill had been drawn in Ireland, and under an impression that it was an English bill wrongly stamped, may be recovered from the holder under the count for money paid, the holder having made the bill his own by laches. *Milnes v. Duncan*, 6 *B. & C.* 671. *ante, p.* 247.

With regard to the count for *money had and received*, it is said that an acceptance is *primâ facie* evidence of money had and received by the acceptor to the use of the holder. *Bayley*, 287. And so it is said by Lord Mansfield, that undoubtedly an action for money had and received to the plaintiff's use may be brought by the *bonâ fide* holder of a note made payable to bearer. That it is certainly money received for the use of the original advancer of it, and if so, it is for the use of the person who has the note as bearer. *Grant v. Vaughan*, 3 *Burr.* 1525. *but see Waynam v. Bend*, 1 *Campb.* 175. *post, contra.* So in an action for money paid, and had and received, by the indorsee against the maker of a note, it appeared that when the note became due the plaintiff received in part payment a 10*l.* bank note which was a forgery, to recover the amount of which this action was brought. It being objected, that the plaintiff ought to have sued on the note, Lord Ellenborough said he thought the action was maintainable; that when a person has put his name to a promissory note, he thereby acknowledges that he has money in his hands of the payee, and undertakes to pay it to whoever is legally entitled to receive it, that is, to the person who shall have paid for it a good consideration, and who has thereby become the legal holder of the note. *Dimsdale v. Lanchester*, 4 *Esp.* 201. But other authorities shew that it is only where the bill or note is enforced between immediate parties, that the plaintiff can recover on the count for money had and received. *See Bently v. Northouse*, 1 *M. & M.* 66. Thus, in an action by the indorsee against the maker of a promissory note payable to L. T. or *bearer*, "for value received," Lord Ellenborough held that the plaintiff could not recover under any of the money counts, as he was not an original party to the bill, and there was no evidence of any value being received by the defendant from him. *Waynam v. Bend*, 1 *Campb.* 175. So in an action by the in-

dorsee against the acceptor of a bill, in which evidence was given, that on the indorsee presenting the bill to the defendant for acceptance, the latter on accepting it said, that he expected a remittance from the drawer in a few days, and that as he had a bill of the drawer in his hands which would be paid, he would run all risks, it was held that this conversation, together with the bill accepted by the defendant, did not amount to sufficient evidence to enable the indorsee to recover the amount of the bill on a count for money had and received. *Whitwell v. Bennett*, 3 *B. & P.* 559. So in an action by an indorsee against the maker of a note, which was misdescribed in the special count, the court said that the plaintiff being an indorsee, the money counts would not help him. *Exon v. Russell*, 4 *M. & S.* 507. Upon the same principle it has been held that the payee of a joint and several note cannot recover against one of the makers, who signed the note as a surety for the other maker, on the count for money had and received, or on the account stated. *Wells v. Girling*, 3 *Moore*, 79. *Gow*, 22. *S. C.* So in an action by the drawers of a bill, payable to their own order, against the acceptor, Lord Ellenborough at first doubted whether the bill could be given in evidence under the money counts; but on its being urged, that the drawers were also the payees, and so the action between immediate parties, he admitted it under the count for money had and received. *Thompson v. Morgan*, 3 *Campb.* 101. *See also Ex parte Davison, Buck*, 32. The drawer of a bill who receives part of the amount from the acceptor to take up the bill, and who promises to do so, is liable to the holder in that amount, in an action for money had and received, though no notice of dishonor has been given. *Baker v. Birch*, 3 *Campb.* 107. In an action by the holder of a bill for money had and received against a person who has received a sum of money from the acceptor to satisfy it, any defence may be set up which would have been available if the action had been brought against the acceptor himself. *Redshaw v. Jackson*, 1 *Campb.* 372.

With regard to the count on *an account stated*, it has been held, in an action by the indorsee against the acceptor of a bill, where the defendant, on being applied to for payment, admitted it to be his, but alleged his inability to pay at the time, that the plaintiff is entitled to recover upon the count on an account stated. *Highmore v. Primrose*, 5 *M. & S.* 65. *See Wells v. Girling*, 3 *Moore*, 79. *Leaper v. Tatton*, 16 *East*, 423. But in an action by the indorsee against the acceptor of a bill, where it appeared, that after the bill was due, it was shewn to the defendant, who was informed that the plaintiff was the holder, and admitted that it was a just debt, and said he would pay shortly, which, as it was contended, was evidence of an account stated, Abbott C. J. is said to have ruled, that as there was

no original privity between the parties, this was not an account stated. *Western v. Wilmott, 5th July,* 1820. *Chitty,* 388. *7th ed.* Where the parties are *immediate,* as in an action by the payee of a bill drawn payable to the drawer's own order, the bill is evidence on the account stated. *Rhodes v. Gent,* 5 *B. & A.* 245. *and see Bishop v. Chambre,* 1 *Danson & Lloyd,* 83. *ante, p.* 33.

Form of action—counts on the consideration.] Where there have been other transactions between the parties to the suit, which form a good consideration, and for which the bill or note has been given, it is proper to insert counts in the declaration, adapted to such cause of action, so that in case the plaintiff should for any reason fail on the counts upon the bill or note, he may resort to the counts on the original consideration. Thus where a promissory note had been given to the plaintiff for work and labour, upon which the plaintiff declared, but which he could not give in evidence for want of a stamp, it was held, that as there was also a count for work and labour, he was entitled to recover on that count. *Alves v. Hodgson,* 7 *T. R.* 241. So where a promissory note had been given for money lent, but when produced in court, was unstamped, Lord Kenyon permitted the plaintiff to recover on a common count for money lent, on proving that when the money, for which the note had been given, was demanded of the defendant, he acknowledged the debt. *Tyte v. Jones,* 1788, 1 *East,* 58. (*n.*), *and see Ex parte Mills,* 2 *Ves. jun.* 303. So in a similar case it was said by Lord Kenyon, that a promissory note is not like a bond which merges the demand, for if money is due for goods sold, or upon any such like account, and a promissory note is given for the amount of the debt, which note afterwards, upon action brought, has not the proper stamp on it, so that it cannot be given in evidence, the party may resort to evidence on the goods sold, or the demand upon account of which the note was given. *Wilson v. Kennedy,* 1 *Esp.* 244. *See also Brown v. Watts,* 1 *Taunt.* 353.

But where the defendant has been discharged from his liability on the bill by the laches of the plaintiff, the latter cannot recover on the original consideration. *See ante, p.* 100. *see also Long v. Moore,* 3 *Esp.* 155. (*n.*). So where a bill or note which has been given in payment for goods, &c. is not produced at the trial, nor its non-production accounted for, the plaintiff cannot recover on the counts on the original consideration. *Dangerfield v. Wilby,* 4 *Esp.* 159. But if the bill was not properly stamped, it is a nullity, and a neglect to present it will not discharge the party who gave it, or prevent the plaintiff from proceeding on the original consideration. *Ante, p.* 33.

Where the plaintiff intends to give evidence of the original

consideration, he should state such consideration in his particulars; for where the particulars only noticed the claim on the note, (which was improperly stamped), Lord Kenyon ruled, that the plaintiff had precluded himself from giving evidence of a loan of money, for which the note was given. *Wade v. Beasley*, 4 *Esp.* 7. *Brown v. Watts*, 1 *Taunt.* 353. *S. P.* The plaintiff's counsel should, in his opening, go into the consideration if he intends to rely upon it. Lord Ellenborough, in one case, would not permit the counsel, who had only stated the claim on the bill, to go into a new case for money lent to the defendant. But it does not appear whether in that case the bill had been given for the money lent. *Paterson v. Zachariah*, 1 *Stark.* 72.

By whom.] An action on a bill or note, must be brought by him in whom the legal interest in the bill or note resides. Thus, where a note is made payable to A. in trust for B., A. may sue upon the note. *Smith v. Kendall*, 1 *Esp.* 231. 6 *T. R.* 123. *S. C. ante, p.* 23. So, where a bill or note is indorsed to a married woman, the interest in it vests in her husband, who may sue upon it. *Arnold v. Revoult*, 1 *B. & B.* 446. *ante, p.* 58. Or, the husband and wife may jointly sue, she being considered the meritorious cause of action. *Philliskirk v. Pluckwell*, 2 *M. & S.* 395. *ante, p.* 58. An infant may sue upon a bill or note, it being a contract made for his benefit. *Bayley*, 40. *Holliday v. Atkinson*, 5 *B. & C.* 501. *ante, p.* 57. And an uncertificated bankrupt may sue upon a bill in his own name, unless his assignees interfere. *Drayton v. Dale*, 2 *B. & C.* 293; *ante, p.* 48. An executor or administrator may sue on a bill or note, which belonged to the deceased. *Ante, p.* 55. Partners must all join in a action on a bill or note; and where the name of a clerk employed at a fixed salary was inserted in the firm, and a bill was drawn in the name of, and in favor of the firm, Lord Ellenborough ruled, that it was necessary to join the clerk as plaintiff. *Guidon v. Robson*, 2 *Campb.* 302. *Teed v. Elworthy*, 14 *East*, 210. Where a bill is specially indorsed to a firm, who sue upon it, proof must be given that the plaintiffs compose that firm. 3 *Campb.* 240. (*n.*) But in other cases, where a bill is generally indorsed to a firm, the plaintiffs need not give evidence of partnership. *Ord v. Portal*, 3 *Campb.* 239. *Rordasnz v. Leach*, 1 *Stark.* 446; *and see post, Chapter* XII. In general, when a bill is dishonored, any of the indorsers in possession of the bill may sue upon it, striking out the names of the indorsers subsequent to themselves. *Walwyn v. St. Quintin*, 1 *B. & P.* 658. So the drawer of a bill, payable to the order of a third person, may, upon its being dishonored, after payment by himself to the holder, sue the acceptor. *Symonds v. Parminter*, 1 *Wils.* 185. 4 *Br. P. C.* 604. As it is not necessary, in order to maintain an action on the bill, that the plaintiff himself should have

given a valuable consideration for it, provided a valuable consideration has passed between some of the other parties to the bill, between the plaintiff and the defendant, *ante*, p. 111, a bill or note may be placed in the hands of a person, merely for the purposes of the suit, and he may recover upon it, unless, perhaps, the right of the defendant to a set-off should be thereby affected. *See Cornforth v. Revetts*, 2 *M. & S.* 512. The depositing a bill after action brought, in the hands of a third person, with notice of such action, will not prevent the plaintiff from proceeding in the action. *Marsh v. Newell*, 1 *Taunt.* 109. *See Colombies v. Slim*, 2 *Chitty*, 637.

The cases in which it has been held that the holder of a lost or stolen bill or note may recover upon it, are collected in a separate chapter. *Vide post*, *Chapter* XV.

Against whom.] In general, on the dishonor of a bill or note, a *bonâ fide* holder may sue every previous party to the bill, at the same time, in separate actions. Thus the payee may sue the drawer and acceptor, the indorsee may sue the the previous indorsers, the drawer and the acceptor, and the drawer may sue the acceptor; and where a bill is drawn upon A. by a firm in which he is a partner, he may be sued in separate actions as drawer and acceptor. *Wise v. Prowse*, 9 *Price*, 393. Unless the name of the party is on the bill, the holder cannot sue him *on the bill*, though he was the person from whom he received the bill. *Ante*, p. 42. In such case, he must proceed upon the original consideration for which the bill was given. *See ante*, p. 256. And so where a person discounts a bill which is dishonored, he has in general no remedy against the party for whom he discounted it; *ante*, p. 99., though it is otherwise in case of forgery. *Ante*, p. 245. So also, no action on the bill can be maintained against the drawee before acceptance; but if he has promised for a good consideration to accept the bill, an action may be maintained on such promise, and if he has received funds to pay the bill, and has promised to pay them over to the holder, or has assented to receiving them, for that purpose, an action for money had and received, may be maintained against him. *Ante*, p. 92. An accommodation acceptor, after payment by himself, may sue the party for whose accommodation he accepted; *ante*, p. 253; and a person who pays a bill for the honor of a drawer or indorser, may sue any of the parties upon the bill prior to him for whose honor he paid it, and this in an action upon the bill itself. *Ante*, p. 251. But a banker, who pays the acceptance of a customer, made payable at his banking-house, has no right of action *upon the bill*; *Holroyd v. Whitehead*, 5 *Taunt.* 444. 1 *Marsh.* 128. 3 *Campb.* 530. *S. C.*; and, where the bail of the maker of a note, pay the note to the indorsee, they cannot sue the indorser in the name of the indorsee. *Hull v. Pitfield*, 1 *Wils.* 46.

The holder of a bill or note cannot in general sue any

party subsequent to himself; nor can he sue the person who delivered the bill to him, if no consideration passed between them; *ante, p.* 111; but if any party to the bill, between himself and the defendant, gave value for it, the holder, though he gave no value himself, may sue the defendant; *ante, p.* 111.

The cases in which agents, *ante, p.* 44; bankrupts, *ante, p.* 40; corporations, *ante, p.* 49; executors and administrators, *ante, p.* 55; infants, *ante, p.* 56; married women, *ante, p.* 58; partners, *ante, p.* 59; and several persons parties to a bill, not partners, *ante, p.* 71; may be sued on a bill or note, have been already stated.

The holder of a bill, as already stated, may sue all the prior parties in several actions, and the recovering of judgment, (without satisfaction,) against one of those parties, will not prevent his proceeding against the others. *Claxton v. Swift*, 2 *Show.* 441. 494. 503. *Macdonald v. Bovington*, 8 *T. Rep.* 825. But satisfaction by one party, will be satisfaction by all the rest, and, therefore, where the plaintiff brought two actions, one against the maker, and another against the indorser of a note, and recovered in both, and the principal money in one of the actions, and the costs in both were tendered, the court directed that the plaintiff should not take out execution. *Windham v. Wither*, 1 *Str.* 515.

Affidavits to hold to bail—form of.] By stat. 7 & 8 G. 4. c. 71. s. 1. no person shall be held to special bail, where the cause of action shall not have originally amounted to the sum of 20*l.* and upwards, over and above and exclusive of any costs, charges, and expenses that may have been incurred, recovered, or become chargeable, in or about the suing for or recovering the same. And by s. 7., no sheriff or other officer, within the principality of Wales, or the counties palatine of Chester, Lancaster, or Durham, shall, upon any mesne process issuing out of any of his majesty's courts of record at Westminster, arrest or hold any person to special bail, unless such process shall be duly marked and indorsed for bail, in a sum not less than 50*l.* An affidavit to hold to bail the acceptor of a bill, must state that the bill is due. *Halcombe v. Lambkin*, 2 *M. & S.* 475. *Machu v. Fraser*, 7 *Taunt.* 171. *Sands v. Graham*, 4 *B. Moore*, 18. 2 *B. & B.* 339. (*n.*) *S. C.* So, where an affidavit to hold to bail stated, that the defendant was indebted to the plaintiff in the sum, &c., as indorsee of a promissory note, made by the defendant, but did not state the date of the note, or that it was payable on demand, or that it was due or payable at a day then past, it was held insufficient, for it might be true that the defendant was indebted, and yet the note might not be due, for it is *debitum in præsenti, solvendum in futuro*. *Jackson v. Yate*, 2 *M. & S.* 148. And, although in one case it was held sufficient to state in the affidavit, that the defendant was indebted as indorsee of a bill, without

alleging the bill to have become due, *Davison v. March*, 1 *N. R.* 157; *see Jackson v. Yate*, 2 *M. & S.* 149; 7 *Taunt.* 172. (*n.*), yet that case has been overruled, and it has been held, that an affidavit stating that *the defendant was indebted to the plaintiff in the sum of £———, as drawer of a bill dated December* 1, 1819, *drawn by the defendant on and accepted by Lord R.*, but not stating the bill to be due, was insufficient, because it did not state the bill to have become due. *Edwards v. Dick*, 3 *B. & A.* 495. It must appear in what manner *the defendant* became a party to the bill, and, therefore, an affidavit which stated that *the defendant was indebted to the plaintiff, who was indorsee on a bill of exchange drawn by T. W.*, not stating in what relation the defendant stood to that bill, was held insufficient. *Humphries v. Winslow*, 6 *Taunt.* 531. 2 *Marsh.* 231. *S. C.* But it has been held by the court of K. B. that an affidavit, stating that the *defendant was indebted to the plaintiff in the sum of £——, upon and by virtue of a certain bill of exchange, drawn by the said defendant, and long since due and unpaid*, is sufficient, though it do not state in what character *the plaintiff* claims. *Bradshaw v. Saddington*, 7 *East*, 94. *Elstone v. Mortlake*, 1 *Chitty Rep.* 648. *Brooks v. Clark*, 2 *D. & R.* 148. In a subsequent case the court of Common Pleas held that an affidavit which did not shew in what character the plaintiff claimed, whether as payee, indorsee, &c. was bad. *Balbi v. Batley*, 6 *Taunt.* 25. 1 *Marsh.* 424. *S. C.* However, in the latter case, the decision of the court of K. B. in *Bradshaw v. Saddington*, (*supra*), was not noticed, and it seems to have been the opinion of the court of C. P. in subsequent cases, that had that decision been offered to their consideration, they should have made the practice of their court conformable to that of the King's Bench. See *Humphries v. Williams*, 2 *Marsh.* 232. (*n.*) *Machu v. Fraser*, 7 *Taunt.* 173.; *and Warmsley v. Macey*, 2 *B. & B.* 341. 5 *B. Moore*, 52. *S. C.* in which latter case, Dallas C. J. relied upon *Bradshaw v. Saddington*, and remarked that *Balbi v. Batley* had been much shaken in *Machu v. Fraser*. And in a late case, two of the judges of the court of C. P. stated, that although it was necessary to allege, that bills of exchange, on which a defendant may be arrested, are unpaid at the time of the arrest, still it is not incumbent on the party to state the character in which the plaintiff is intitled to sue on them, and that the want of such description will not vitiate the affidavit. *Lamb v. Newcombe*, 5 *B. Moore*, 15. Accordingly, in a later decision in that court, it was held, that an affidavit, stating that the defendant was indebted to the plaintiff in 20*l.*, lent on a bill of exchange for 37*l.* drawn by S., accepted by the defendant, and over-due and unpaid, was good. *Bennett v. Dawson*, 4 *Bingh.* 609. An affidavit, stating that *the defendant was indebted to the plaintiff in the sum of £——, as the acceptor of a certain bill of exchange,*

bearing date the 10th day of April last, drawn by the plaintiff for a valuable consideration on, and accepted by the defendant, payable two months after the date thereof, and due at a day now past, is sufficient without stating that the bill remains unpaid. *Warmsley v. Macey*, 2 *B.* & *B.* 338. 5 *B. Moore*, 52. *S. C.* In an affidavit to hold to bail, in an action of trover for a bill of exchange, it must appear that the bill has not been paid. *Clarke v. Cawthorne*, 7 *T. R.* 321.

Affidavit to hold to bail—who may be bail.] An indorser of a bill may be bail in an action against the drawer. *Harris v. Manley*, 2 *B.* & *P.* 526. Where the same persons are bail in two actions on the same bill, they are only bound to justify in double the amount of the sum sworn to in each action, and not in double the amount of the sum sworn to in both actions. *Reid v. Ellis*, 1 *B. Moore*, 29.

Affidavit to hold to bail—in actions against married women.] Where a married woman had accepted a bill of exchange, and was held to bail on it, the court refused to order the bail bond to be cancelled, though it was sworn that the drawer, when he drew the bill, knew the defendant to be a married woman; for, by accepting, she represented herself to be a feme sole. *Prichard v. Cowlam*, 2 *Marsh.* 40. So where a married woman drew a bill on which she was arrested, the court refused to discharge her out of custody, on the same ground as in the last case, and also because there was no affidavit as to the coverture from the defendant herself. *Jones v. Lewis*, 2 *Marsh.* 305. 7 *Taunt.* 55, *S. C.*

Declaration.] Where the plaintiff has a cause of action on a bill or note, it is always advisable to insert in the declaration counts on such bill or note, even where he may proceed for the original consideration, or where the bill or note would be evidence under the money counts; for if he declares upon the bill or note, and the defendant suffers judgment by default, it will not be necessary to execute a writ of inquiry, the damages being assessed on a reference to the officer of the court; *see post*; whereas, if there be no count on the bill or note, a writ of inquiry must issue.

A bill or note in a foreign language, may be stated as if it were in English, without noticing the foreign language. *Attorney Gen. v. Valabreque, Wightw.* 9. *See R. v. Goldstein*, 3 *B.* & *B.* 201. 7 *B. Moore*, 1. *Russ.* & *Ry. C. C. R.* 473. *S. C.*

Declaration—venue.] An action on a bill of exchange or promissory note is transitory, and may be laid in any county; and the court will not in general allow the defendant to change the venue to the county in which the cause of action really

arose. Even where it appears by the declaration, that there are other causes of action, the venue cannot changed. *Shepherd v. Green*, 5 *Taunt.* 576. So where, in an action on a promissory note, and for goods sold, though it appeared by the defendant's affidavit, that the real cause of action was a sale of goods, the court of K. B. refused to allow the venue to be changed, observing, that if the affidavit had stated that the promissory note did not exist, and that the count on it was inserted merely for the purpose of preventing the defendant from changing the venue, the court might perhaps have granted the rule. *Hart v. Taylor*, 2 *D. & R.* 164. But in a case in the Exchequer, where it appeared by the particulars of the plaintiff's demand, that the sum claimed for goods sold and delivered was nearly treble the amount of the sum for which the bill had been drawn, and that the bill had in fact been given in part satisfaction of the original debt for the goods sold; the court said, that under these circumstances the case was not within the general rule, that the venue, in an action on a bill of exchange, cannot be changed, and refused to bring back the venue after it had been changed. *Greenway v. Carrington*, 7 *Price*, 564. *and see Baskerville v. Cooper*, 1 *Price*, 374. So under special circumstances, as where the defendant has a number of witnesses living in the county to which he wishes to change the venue; and it would be a serious inconvenience to bring them to the county in which the venue is laid, the court of C. P. have allowed the venue to be changed in an action on a promissory note. *Evans v. Weaver*, 1 *B. & P.* 20. *See Tidd*, 653. 8*th ed.*

Declaration — statement of "custom of merchants," or "by force of the statute."] In declaring upon a bill of exchange, it is neither necessary to set out the custom of merchants at large, *Soper v. Dible*, 1 *Ld. Raym.* 175; or, to refer to it, for the law will take notice of the custom. *Ereskine v. Murray*, 2 *Ld. Raym.* 1542. *See also Carter v. Dowrish*, *Carth.* 83. *Williams v. Williams*, *Carth.* 269. *Bayley*, 307. In actions upon notes, instead of referring to the custom of merchants, the count refers to the statute; but this is unnecessary. *Bayley*, 307.

Declaration — statement of the date.] In declaring on bills payable in a certain time after date, the day of the date should be stated; and, where such a bill is not in fact dated, the day on which the bill was made should be stated; and the time of payment will be computed from that day. *Giles v. Bourne*, 6 *M. & S.* 73; *ante*, *p.* 24. If the day on which the bill was made cannot be ascertained, then the first day on which the plaintiff knew, and can prove that it existed, should be stated. *Bayley*, 304. Where the declaration alleged, that the defen-

dant on, &c., made his certain bill of exchange in writing, *bearing date the same day and year aforesaid*, and the real date of the bill was different, Lord Ellenborough held the variance to be fatal and non-suited the plaintiff. 2 *Campb.* 308. (*n.*) But where the declaration stated, that the defendant made his certain bill of exchange in writing, on the 3d day of February, (without stating, that it was so dated), and then and there requested the drawee to pay on the 1st day of August, &c., and the bill, when produced, appeared to be dated the 6th February, *Thompson*, B. ruled, that this was no variance, and that the plaintiff was not bound to prove that the bill was drawn on the day stated, though it was laid without a *videlicet*. *Coxon v. Lyon*, 2 *Campb.* 307. (*n.*) A mistake in the statement of the date may now be amended at the trial, by stat. 9 G. 4. c. 15 ; *see Chap.* XII.

Declaration — place at which the bill or note was made.] It is usual to state the place at which a bill or note was made ; and where it was made abroad, or out of the county in which the action is brought, it is usual to state the place at which it is dated, adding the common venue of the county in which the action is brought, under *a videlicet*, as " at Paris," or " at Liverpool," " to wit, at Westminster, in the county of Middlesex." The statement of the actual place, is not, however, necessary. Thus, in an action on a note, dated at Paris, Lord Ellenborough said, that he saw no reason why it might not be stated, that the note was made in the parish of Saint Mary-le-bow, in the ward of Cheap, though dated at Paris, in the same manner as if it had been dated at York. *Houriet v. Morris*, 3 *Campb.* 305.

Declaration — payee — place, and time of payment.] Where a bill is made payable to a fictitious person, and indorsed generally as by him, the holder may, as against a party acquainted with the circumstances, treat it as a bill payable to bearer. *Ante*, p. 24. Where a bill is issued with a blank for the payee's name, a *bonâ fide* holder may insert his own name ; and it may be so declared upon ; *Attwood v. Griffin*, *Ry. & Moo.* 425 ; or, it may be treated, as it seems, as a bill payable to bearer ; *ante*, p. 23 ; but it is prudent, in such cases, to insert counts, stating the way in which the bill was actually drawn. Where a bill or note is made payable *to the order of* A. B., A. B. may sue upon it, and aver, that it was made payable to himself ; *Frederick v. Cotton*, 2 *Show.* 8 ; and if he state, that the bill was made payable to his order, he need not shew that he has made no order. *Smith v. M'Clure*, 5 *East*, 476. Where a note is made payable to a married woman, the holder should declare upon it, according to its legal effect, that is, as a note payable to the husband. *Per Ld. Kenyon*, *Barlow v. Bishop*, 3 *Esp.* 267. 1 *East*, 432, *S. C.*

The place at which a bill or note is made payable, should be stated, where that place forms part of the contract. *Ante*, p. 26. The insertion of such place, where, in fact, it does not form part of the contract, is a variance. *Ante*, p. 26. An acceptance, by which a bill is made payable at a particular place, but not at such place only, and not otherwise or elsewhere, may since the stat. 1 & 2 Geo. 4. c. 78, be stated as a general acceptance. *Ante*, p. 149.

The time at which the bill is made payable, must be stated, so that it may appear to be due. Where a bill is drawn at usance, the length of the usance must be averred, for the court will not take judicial notice of it; the omission is fatal on demurrer. *Buckley v. Cambell*, 1 *Salk.* 131; *ante*, p. 185.

Declaration—sum payable.] The sum payable must be stated according to the legal effect, and where a bill is stated generally to be for the payment of so many pounds, pounds sterling will be intended. Thus, where the declaration stated that a bill was drawn at Dublin to wit, at Westminster, and that the drawers requested the drawee to pay to their order, the sum of 542*l.* 1*s.* 8*d.* and at the trial the bill appeared to be drawn for 542*l.* 1*s.* 8*d.* Irish currency, it was held to be a fatal variance. *Kearney v. King*, 2 *B. & A.* 301. 1 *Chitty*, 28. *S. C. Sprowle v. Legge*, 1 *B. & C.* 16. 2 *D. & R.* 15. *S. C.* 3 *Stark.* 156. *S. C.*

Declaration—value received.] Where a bill or note contains the words *value received*, it is no variance to omit them in the declaration. *Ante*, p. 27. But if stated, they must be stated according to their legal effect. *Ante*, p. 27. Where a note was given for value *delivered* in leather, it was held to be no variance to state it to have been for value *received* in leather. *Jones v. Mars*, 2 *Campb.* 305. But a bill described to have been "for value received," is not proved by producing a bill "for value in wheat," for it does not import that the wheat was delivered. *Per Lord Tenterden, Hil. Vac.* 1827. *Chitty*, 356. *7th ed.*

Declaration—parties.] The parties must be correctly stated, and if the name of any parties to the bill or note, who are not parties to the action, is mistaken, it is a ground of nonsuit. Thus, where in an action against the acceptor of a bill, it was declared upon as drawn by John *Crouch*, but appeared to be drawn by John *Couch*, the variance was held fatal. *Whitwell v. Bennett*, 3 *B. & P.* 559. *Le Sage v. Johnson, Forrest*, 23. In an action against the makers of a note by the names of William Austin, *Robert* Strobell, and William *Shutliffe*, the two latter were outlawed, and the former pleaded *non assumpsit*. It appeared at the trial, that the names of the parties were William Austin, *Daniel* Strobell, and William *Shirtliffe*, and a

verdict being taken for the plaintiff, the court set it aside on the ground of a variance. *Gordon v. Austin*, 4 *T. R.* 611. *folio edition.* But in general, the rule of law is, that the misnomer of any of the parties to the suit must be pleaded in abatement. Thus, where the plaintiff declared in the name of *Edward* Boughton, as drawer of a bill, and it appeared that his name was *Edmund*, Bayley, J. thought that it would be enough to shew that the bill was drawn by the plaintiff, and that the defendant knew by whom the action was brought, and refused to nonsuit the plaintiff. *Boughton v. Frere*, 3 *Campb.* 29. And the same point has been decided with regard to the surname of the plaintiff in an action for goods sold. *Jowett v. Charnock*, 6 *M. & S.* 45. So in an action on a promissory note, where one of the makers was sued by the name of Thomas Key (his real name being John Key) and suffered judgment by default, the misnomer was held immaterial, it being proved that John Key had been in fact sued, and served with process. *Dickinson v. Bowes*, 16 *East*, 110. So where, in the body of a note, the amount was made payable to Elizabeth Willison, and the action was brought by Elizabeth Willis, the plaintiff was allowed to adduce evidence to shew that *Willison* was inserted by mistake for *Willis*, the declaration alleging a promise to pay *Willis* by the name of *Willison*. *Willis v. Barrett*, 2 *Stark.* 29. In an action by the indorsee against the acceptor of a bill payable to the order of Phillip Phillips, the declaration stated that it was payable to Phillip Phillip; it was objected that this was a variance; but Lord Ellenborough said that whether the name on the bill be the party's false or true name is immaterial, if it be his name of trade; that the only question was as to the identity of the person. *Forman v. Jacob*, 1 *Stark.* 47. *sed quære.*

A note signed by the defendant alone, but on the face of it importing to have been made by the defendant, and another, may be declared upon as the several note of the defendant. *Roberts v. Peake*, 1 *Burr.* 322. So a joint and several note may be declared on as the several note of any of the makers. *Per Abbott, C. J. Mountstephen v. Brooke*, 1 *B. & A.* 226. *Butler v. Malissey*, 1 *Str.* 76. And so in declaring against all, such a note may, as it seems, be treated as a joint note only. *Middleton v. Sandford*, 4 *Campb.* 34. And where in an action against one of two makers of a joint and several note, the declaration stated that the defendant and another jointly *or* severally promised, after judgment by default, this was held good. *Rees v. Abbott*, *Cowp.* 832. *overruling Butler v. Malissey*, 1 *Str.* 76. *Ovington v. Neale*, 2 *Str.* 819. If one of the makers of a joint note is sued, he can only take advantage of it by plea in abatement. *Per Buller J. Rees v. Abbott*, *Cowp.* 832. And so, if one of several joint drawers of a bill is sued alone. *Evans v. Lewis*, *cited* 1 *B. & A.* 226. So also where the declaration

stated a bill to have been accepted by the three defendants, and it appeared to have been accepted by them and another, it was held to be no variance. *Mountstephen v. Brooke*, 1 *B. & A.* 224.

In an action against the acceptor of a bill, purporting to be drawn by a firm, the declaration may state the bill to be drawn "by certain persons trading under the firm," &c. and if it appear that it was drawn by a single person, it is no variance, for the acceptor is estopped from averring, that the bill was not drawn by an aggregate firm. *Bass v. Clive*, 4 *M. & S.* 13. 4 *Campb.* 78. *S. C.*

A bill or note drawn or made by an agent so as to bind his principal, may be declared on as drawn or made by the principal himself. *Heys v. Heseltine*, 2 *Campb.* 604. *Helmsley v. Loader*, 2 *Campb.* 450. *Erskine v. Murray*, 2 *Ld. Raym.* 1542.

An averment that the party drew, or indorsed, or accepted the bill, *his own handwriting being thereunto subscribed*, is sometimes inserted, but the latter words should be omitted. Where an indorsement was so stated, and it appeared that the indorsement had been made by procuration, Lord Ellenborough directed the plaintiff to be nonsuited. *Levy v. Wilson*, 5 *Esp.* 180. But where the declaration stated that the defendants "made their certain bill of exchange in writing, their own proper hands being thereunto subscribed," and the bill when produced appeared to be drawn in the defendants' name of "Mars & Co.," Lord Ellenborough said, that had it been "their own proper *hand*" in the singular, he should clearly have held it sufficient, that he entertained some doubt, but that he would not nonsuit the plaintiff. *Jones v. Mars*, 2 *Campb.* 305. So where, in a declaration against the acceptor, it was stated that the payee indorsed the bill to the plaintiff "his own proper hand being thereunto subscribed," it appearing that the name of the payee was written by his wife, but that the defendant on being acquainted with this circumstance, promised the plaintiff to pay the bill, Lord Ellenborough said that he thought it would be two narrow a construction of the words *own hand*, to require that the name should be written by the party himself, and was inclined to think it would be enough to shew that the name was written by an authorised agent, but that at any rate the defendant could not be allowed to take the objection, after a promise to pay, made with a knowledge of all the facts. *Helmsley v. Loader*, 2 *Campb.* 450. In a very late case, where in an action on a promissory note it was averred that the defendant made the note "his own proper handwriting being thereunto subscribed," but it appeared in evidence that the name was written by the defendant's son under his authority, Lord Tenterden held it to be no variance, and that the words "his own proper hand," &c. might be rejected as surplusage. *Booth v. Grove*, 1 *M. & M.* 182.

The allegation that the drawer *made his bill* in writing, is sufficient, without stating that he *signed it*; for that he made it

implies that his name was in it (otherwise he could not request), and that he or somebody for him wrote it. *Ereskine v. Murray*, 2 *Ld. Raym.* 1542. So it is sufficient, in declaring on a note, to allege that the maker *made* his note, subscribed with his hand, though the statute speaks of notes, *signed*. *Smith v. Jarvis*, 2 *Ld. Raym.* 1484.

A delivery of the bill by the drawer to the payee need not be stated, that fact being included in the allegation that the drawer *made* the bill. *Churchill v. Gardner*, 7 *T. R.* 596. *Bayley*, 316.

Declaration — acceptance.] In an action against the drawer or indorser of a bill, after presentment for payment and refusal, it is not necessary to state that the bill was accepted, and if stated, it need not be proved, but the allegation may be rejected as surplusage. *Tanner v. Bean*, 4 *B. & C.* 312. 6 *D. & R.* 338. *S. C. overruling Jones v. Morgan*, 2 *Campb.* 474. Where it is necessary to state an acceptance, and such acceptance is conditional, it must be so stated, and a performance of the condition must be shewn, *ante*, *p.* 187, and a special acceptance, since the 1&2 G. 4. c. 78. must be so stated. *Ante*, *p.* 185. With regard to the time at which the acceptance is alleged to have been made, where the time of payment depends on the presentment, and the action is against the drawer of a bill, or the indorser of a bill or note, the very day of presentment should be stated; in other cases exactness as to the day is not requisite. *Bayley*, 317. And though the day of payment depend upon the presentment, as in bills payable a given time after sight, yet if the action is against the *acceptor*, exactness as to stating the day of presentment is not essential. *Ibid.* Thus, in an action against the acceptor of a bill payable fifty days after sight, the declaration alleged an acceptance on the day on which the bill bore date, viz. 11th August, and a presentment for payment accordingly. It appeared that the bill had in fact been accepted on the 19th September, and presented for payment on the 11th November. It was objected, 1st. that the presentment for acceptance where the bill is payable after sight is material, and that, therefore, the true day ought to have been inserted; and 2dly, that the presentment for payment on the 11th November, was not a presentment *when the bill became due and payable*, as alleged in the declaration. Lord Ellenborough was of opinion that "*when the bill became due and payable*," was, with respect to the acceptor, the same as *after the bill became due and payable*, and that it was sufficient if it appeared in evidence that the bill had been presented for payment after the time when it became due according to the terms of the bill and the date of presentment for acceptance. *Forman v. Jacob*, 1 *Stark.* 46. It is said by Lord Holt, that if the plaintiff declares that the acceptance was before the day appointed for the

payment, and that he accepted to pay it *according to the tenor and effect of the bill*, and it appears upon the evidence that the acceptance was in fact *after* the day of payment, that would be against the plaintiff. *Jackson v. Pigott*, 1 *Lord Raym.* 365. 12 *Mod.* 212. *S. C.* *See Young v. Wright*, 1 *Campb.* 139. *infra.*

Declaration — indorsements.] When the action is brought by an indorsee, such an indorsement or indorsements must be stated in the declaration as may be requisite to show a title in the plaintiff. The indorsement of the payee must in all cases be stated, but if such indorsement be general and not special, the plaintiff may in his declaration treat it as an indorsement to himself, omitting to notice the intermediate indorsements, whether general or special. *Smith v. Clarke, Peake*, 225. 1 *Esp.* 180. *S. C.* *Chaters v. Bell*, 4 *Esp.* 210. *Per Bayley, J. Williamson v. Johnston*, 2 *D. & R.* 283. *ante, p.* 137. So in case of several indorsements between the indorsement in blank by the payee and the indorsement by the defendant to the plaintiff, the latter may declare as upon an immediate indorsement by the payee to the defendant, and by the defendant to himself. *Chaters v. Bell*, 4 *Esp.* 211. Where the action is brought against a late indorser, it is immaterial, with regard to the proof, whether the prior indorsements are or are not stated; as the indorsement of the defendant admits the prior indorsements. *Critchlow v. Parry*, 2 *Campb.* 182, *and see Bosanquet v. Anderson*, 6 *Esp.* 43. *post. Chap.* XIII. In an action against the maker of a note payable to L. T. or bearer, the declaration stated an indorsement by L. T., and Lord Ellenborough ruled that the indorsement, though unnecessarily stated, must be proved. *Waynam v. Bend*, 1 *Campb.* 175. *sed quære; see Tanner v. Bean*, 4 *B. & C.* 312. 6 *D. & R.* 338. *S. C. ante, p.* 267. Where the declaration stated all the indorsements to have been made *before* the bill became due, and it appeared that the indorsement to one of the plaintiffs was made *after* it was due, Lord Ellenborough held the variance to be immaterial. 1 *Young v. Wright*, 1 *Campb.* 140. It is not necessary to state notice of the indorsement. *Reynolds v. Davies*, 1 *B. & P.* 625. *Anon. Prac. Reg.* 358. *Bayley*, 320.

Declaration — presentment.] In an action against the maker of a note or the acceptor of a bill who has accepted it generally, it is not necessary to aver in the declaration a presentment to such maker or acceptor, *Turner v. Haydon*, 4 *B. & C.* 1. *ante, p.* 147; and the common breach at the conclusion of the declaration is a sufficient statement of the breach of the contract; and even where a bill is made payable in the body of it, at a particular place, yet if it is accepted generally it is unnecessary to insert any averment of a presentment at the particular place. *Ante, p.* 149. But where a bill is accepted payable at a banker's

or other place only, and not otherwise or elsewhere, which is a special acceptance, a presentment at that place must be averred, even in an action against the acceptor himself, *ante*, *p.* 148; and so where a note is made payable, in the body of it, and not merely in a memorandum at the foot, at a particular place, in an action against the maker, a presentment at such place, must be averred. *Ante*, *p.* 151. In an action against the acceptor of a bill or the maker of a note payable on demand, a presentment or demand need not be stated, the action itself being a demand. *Rumball v. Ball*, 10 *Mod.* 38. *Bayley*, 325.

In an action against the drawer of a bill or the indorser of a bill or note, as he is only liable in case of a default by the acceptor or maker, a presentment for acceptance or payment must be averred. *Mercer v. Southwell*, 2 *Show.* 180. *Rushton v. Aspinall*, *Dougl.* 679, *4th ed.*

Where a bill is specially accepted payable at a particular place, as at "Messrs. F. & Co. No. 6, Church Street," it is not sufficient to aver a presentment to Messrs. F. & Co. without shewing that the bill was presented at No. 6. Church Street. *Ambrose v. Hopwood*, 2 *Taunt.* 61. But where a bill was accepted payable at the house of Kensington & Co. and it was averred that the bill was shewn and presented to the persons using the style, &c., of Kensington & Co. for payment thereof, *according to the tenor and effect of the said bill and of the said acceptance thereof*, the averment was held sufficient. *Huffam v. Ellis*, 3 *Taunt.* 415. Where a bill was drawn payable, in the body of it, at Messrs. Vere & Co., Lombard Street, and was accepted by the defendant, and the declaration averred that when the bill became payable it was presented *to the defendant* at Vere & Co's. for payment, and that the defendant refused to pay, on demurrer, because it was not alleged that the bill was not paid by Vere & Co. or by some person on their behalf, or by some person on behalf of the defendant at the house of Vere and Co. or elsewhere, the court said that the bill did not purport that Vere and Co. would pay, but only that the defendant would pay at their house, and it was averred that the bill was presented there for payment, and that the defendant was required to pay it, but refused; and judgment was given for the plaintiff. *Giles v. Bourne*, 6 *M. & S.* 73. 2 *Chitty*, *Rep.* 300. *S. C.* Where the declaration in an action against the payee stated that the acceptor accepted the bill, "payable at Smith, Payne, and Smith's, in London," and averred presentment when the bill became due, "at the house of Messrs. Smith, Payne and Smith," on error brought, it was assigned for error, that no presentment was alleged either to the acceptor or to Smith, Payne, and Smith; but the court of exchequer chamber thought that the error assigned could not be supported. *Hawkey v. Borwick*, 4 *Bingh.* 135. 1 *Y. & J.* 376. *S. C. De Bergareche v. Pillin*, 3 *Bingh.* 476.

Where a presentment has not in fact been made, but the defendant has promised to pay, or paid part, with a knowledge of that fact, such promise or part payment will be evidence of a presentment, and it will be sufficient to aver, in the usual form, that the bill when due was presented. *Ante, p.* 167. *Lundie v. Robertson,* 7 *East,* 231. When the drawer or acceptor cannot be found, so as to make presentment, evidence of that fact will not support an averment of presentment. *Leeson v. Pigott,* 1788, *Bayley,* 324. Where, in an action against the drawer, the declaration averred that when the bill became due the drawer was not found, and that the bill was protested and not paid; after judgment by default, it was moved in arrest of judgment, that it was not shown that there had been any inquiry made after the drawee; to which it was answered, that the averment was according to the custom of merchants, and according to the common form in such cases, and the plaintiff had judgment; *Starke v. Cheesman, Carth.* 509; but it is safer to allege that due search has been made for the drawee; and that no such person can be found. *See Smith v. Bellamy,* 2 *Stark.* 225. Where a note is made payable at a particular town, it has been ruled that an averment of presentment there to the maker is supported by proof of presentment at the banking houses there. *Hardy v. Woodroofe,* 2 *Stark.* 319. When on account of the political situation of the country in which the drawee resided, a bill was not presented until several weeks after it became due, and in the declaration it was averred, in the usual manner, that the bill was presented for payment; the court of K. B. refused to grant a new trial. *Per Lord Ellenborough,* "*Duly presented,* is, presented according to the custom of merchants, which necessarily implies an exception in favour of those unavoidable accidents which must prevent the party from doing it within the regular time; and it was left to the jury to say, whether, from the situation of the country, it was possible for the plaintiff to present it in due time." *Patience v. Townley,* 2 *Smith,* 224. *ante, p.* 169.

The exact day on which a bill is averred to have been presented is not material, being laid under a *videlicet,* and it being averred that the bill was presented *when it became due and payable:* therefore if the day laid be a Sunday, it is not material. *Bynner v. Russell,* 1 *Bingh.* 23. 7 *B. Moore,* 286. *S. C.*

Where the declaration avers a presentment by a particular person, the statement of the person is immaterial. *Boehm v. Campbell,* 1 *Gow,* 55.

Where an averment of a presentment at a particular place is necessary, in an action against the acceptor of a bill or the maker of a note, it is not also necessary to aver a special refusal there; the general averment of refusal to pay at the conclusion of the declaration is sufficient. *Butterworth v. Lord Despencer,* 3 *M. & S.* 150. *Benson v. White,* 4 *Dow,* 334.

Declaration—notice.] In an action against the acceptor of a bill, whether generally or specially accepted, no notice of dishonor to the defendant need be averred. *Smith v. Thatcher*, 4 *B. & A.* 200. *Treacher v. Hinton*, 4 *B. & A.* 413. *ante*, *p.* 199. Nor need notice to the maker of a note, payable at a particular place, be averred. *Pearse v. Pemberthy*, 3 *Campb.* 261. *ante*, *p.* 200. But in all actions against the drawer of a bill or the indorser of a bill or note, notice of the dishonor to the defendant must be averred, and the omission of such averment is error, and not cured by verdict. *Rushton v. Aspinall*, *Dougl.* 654. 679. 4*th ed.* In an action against the drawer or indorser of a *foreign* bill, a protest must also be stated in the declaration; but the omission can only be taken advantage of by special demurrer. *Salomons v. Stavely*, *cited Dougl.* 684. (*n.*) 4*th ed.* *Bayley*, 327. An averment that the plaintiff protested *or* caused to be protested is improper, but is cured by pleading over. *Witherley v. Sarsfield*, 1 *Show.* 125.

Whether want of effects in the hands of the drawee, can be given in evidence under the general averment of notice in an action against the drawer, or whether it is necessary to aver the want of effects as an excuse for non-presentment, does not appear to have been decided. In the case of *Cory v. Scott*, 3 *B. & A.* 624., Mr. Justice Bayley says, "I am inclined to think that it is incumbent on the plaintiffs to allege in their declaration the want of effects, in order to excuse notice. If notice be averred to be given, it seems to me that it ought to be proved; and the proof of circumstances which excuse the giving of notice does not seem to me to be *ad idem*, with such an averment. Possibly, however, it might be considered that such circumstances would be evidence of notice, inasmuch as they would be evidence that the party knew that the bill would be dishonored." Mr. Justice Holroyd said, "I think that where a person draws on his own account, and at the same time knows that the bill, when presented, will be dishonored, the general allegation of notice would be sufficient." *See Bayley*, 329. It is usual, however, to make a special averment. *See Legge v. Thorpe*, 12 *East*, 171. *Orr v. Maginnis*, 7 *East*, 359. Where no notice has been given, but after the bill has become due, the defendant, with knowledge of the fact, has paid part or promised to pay, evidence of such part payment or promise to pay, will support the general averment of notice or of a protest. *Lundie v. Robertson*, 7 *East*, 231. *ante*, *p.* 168. *Gibbon v. Coggon*, 2 *Campb.* 188. *ante*, *p.* 236. So where, in consequence of the residence of the party being unknown, notice has not been given for several weeks, yet, if the notice be good, it may be given in evidence under the common averment of notice. *Firth v. Thrush*, 8 *B. & C.* 387.

Declaration—promise.] In a declaration against the maker

of a note, *Lowther v. Conyers, cited* 1 *Str.* 224, or against the drawer of a bill, no actual promise need be stated, for the law will raise the promise upon the custom of merchants. *Starke v. Cheesman, Carth.* 509. 1 *Salk.* 128. *S. C. Wegersloffe v. Keene,* 1 *Str.* 224. And it seems that in no case is it necessary to state a promise. *Bayley,* 330. *See Morris v. Norfolk,* 1 *Taunt.* 213. In an action against the maker of a note, or the acceptor of a bill, the promise of the defendant is stated to be to pay *according to the tenor and effect* of the note or bill; in an action against the drawer of a bill or the indorser of a bill or note, the promise is stated to be to pay *on request.*

Inspection of the bill.] It is said that in an action on a bill of exchange or promissory note, on a special ground, if a special ground be laid, as that the demand is of long standing, and the defendant has no copy of the instrument, or that there is reason to suspect its being forged, &c., the court on motion, or a judge on summons, will make an order for the delivery of a copy of it to the defendant or his attorney, and that all proceedings in the action be in the mean time stayed. *Tidd,* 689, *8th ed.* When a motion to this effect was made on the ground that the bill had come to the defendant's hands by fraud, which was directly negatived on the other side, the court of C. P. refused to grant the motion. *Threlfall v. Webster,* 1 *Bingh.* 161. 7 *Moore,* 559. *S. C.* And where a motion was made that a bill on which an action was brought should be impounded in the hands of the prothonotary, and the defendant be permitted to inspect it in order to see whether or not it was a forgery, the court of C. P. refused to grant a rule. *Hildyard v. Smith,* 1 *Bingh.* 451. 8 *Moore,* 586. *S. C.*

Staying proceedings.] If separate actions are brought against the acceptor, drawer, and indorser of a bill of exchange, the court of King's Bench will stay proceedings against the drawer, or any of the indorsers, on payment of the bill and costs of that action, but not against the acceptor without payment of costs in all the actions. *Smith v. Woodcock,* 4 *T. R.* 691. *Tidd,* 586. *8th ed.* But where there is an attachment against the sheriff, in an action against the acceptor, the sheriff will be relieved on payment of the costs in that action only. *R. v. Sheriff of London,* 2 *B. & A.* 192. And where there is reason to believe that the action against the drawer has been commenced for the sake of the costs, the court will stay proceedings against the acceptor on payment of the debt and his own costs. *Hodson v. Green,* 2 *D. & R.* 57. On motion to stay proceedings in an action on a promissory note, on an affidavit that the note was obtained without consideration, it being objected that the court would not interfere in this matter, which was proper for the trial of the cause, the court said it was often done on such

applications, if the other side did not contradict the assertion of the defendant; but when there were contradictory affidavits, the court would not interfere in this summary way. *Turner v. Taylor*, E. 23 G. 3. *K. B. Tidd*, 573. 8*th ed.*

Judgment by default.] When the defendant has suffered judgment by default, it is not necessary to execute a writ of inquiry, but the court on motion will refer it to the proper officer to compute principal and interest, and will allow final judgment to be signed for this sum. Though formerly it was otherwise, this practice now prevails in the Exchequer, as well as in K. B. and C. P. *Biggs v. Stewart*, 4 *Price*, 134. The rule is confined to those cases in which it appears on the declaration that the action is brought on bills or notes. *Osborne v. Noad*, 8 *T. R.* 648. And when the bill is for foreign money, the court will not refer it to the master. *Maunsell v. Lord Massarene*, 5 *T. R.* 87. *See Stoveld v. Brewin*, 2 *B. & A.* 118. 2 *Chitty Rep.* 233. So where there are charges and expenses to be ascertained, *Goldsmith v. Taite*, 2 *B. & P.* 55, or re-exchange *Napier v. Schneider*, 12 *East*, 420.

When a writ of inquiry is executed on a judgment by default, it is not necessary to give any evidence, or even to produce the bill, except for the purpose of seeing whether any part of it is paid. *Green v. Herne*, 3 *T. R.* 301. *Mills v. Lyne*, *B. R. H.* 26 G. 3. *Bayley*, 385. It is said, that if, on the execution of the writ of inquiry, the bill or note is not produced, the plaintiff is entitled to nominal damages. *Per Abbott, C. J. Marshall v. Griffin, Ry. & Moo.* 41.

CHAPTER XII.

OF THE EVIDENCE.

Production of the instrument.
Variances.
Identity.
Admissibility of agreement to control the operation of a bill.
Evidence in the various actions.
- Payee v. Acceptor.
- Indorsee v. Acceptor.
  - What the acceptance admits.
  - When the plaintiffs are partners, or sue in a particular capacity.
  - What indorsements must be proved, and how.
  - Promise to pay, dispensing with proof of indorsements.
  - Admission of indorser.
- Payee v. Drawer.
  - Drawing of the bill.
  - Presentment.
  - Notice.
    - Contents of, how proved.
    - Time of giving, how proved
    - When excused.
    - Protest.
- Indorsee v. Indorser.
  - Admission of the drawing, and prior indorsements.
- Accommodation Acceptor v. Drawer.
- Payee v. Maker of Note.
- Indorsee v. Maker of Note.
- Indorsee v. Indorser of Note.

Defence.
- Want of consideration.
- Statute of limitations.

Competency of witnesses.
Drawer.
Indorser.
Acceptor or maker.

In an action on a bill or note, the plaintiff must in general produce the instrument on which he sues, and prove all the material allegations in his declaration.

Production of the instrument.] In general it is necessary to produce the bill or note upon which the plaintiff sues, or to shew that it has been destroyed. Thus, where it appeared that the defendant had torn his own note of hand, a copy of it was admitted as good evidence. *Anon.* 1 *Lord Raym.* 731. And, where the bill on which the plaintiff sued was in the possession of the defendant, and it appeared that he had admitted that he owed the money due upon the bill, Abbott, C. J. ruled, that such an admission might be given in evidence, under the common counts, without a notice to produce the bill. *Fryer v. Brown, R. & M.* 145. But, in general, when the instrument upon which the plaintiff sues is in the possession of the defendant, notice to produce it must be given; *Smith v. M'Clure,* 5 *East,* 477; unless in cases where, from the nature of the action, the defendant must know that the plaintiff means to charge him with the possession of the instrument, as in trover for a bill or note, in which case a notice to produce is unnecessary. *How v. Hall,* 14 *East,* 274. *Collings v. Treweek,* 6 *B. & C.* 399. *Cowan v. Abrahams,* 1 *Esp.* 50. *contra.* The destruction of the instrument must be satisfactorily proved, before the secondary evidence can be admitted, and evidence must also be given of the genuineness of the original instrument. *Goodies v. Lake,* 1 *Atk.* 446. The cases in which a person who has lost a bill or note has been allowed to recover, without production of the instrument will be stated hereafter. *Post, Chapter* XV.

Variances.] The bill or note, as described in the declaration, must be supported by that produced in evidence, or the variance, if material, will be fatal, unless it can be amended at the trial, under statute 9 *Geo.* 4. *c.* 15. by which the judge may cause the record to be amended when any variance shall appear between any matter in writing or in print, produced in evidence, and the recital, or setting forth thereof upon the record.

With regard to the date, it has been stated, that where a bill or note is described as *bearing date* on a certain day, that day is material, and if misdescribed, the variance is fatal. 2 *Campb.*

308. (*n.*) *ante*, *p.* 263. But if it be stated that the bill was made on such a day, the exact day need not be proved. *Coxon v. Lyon*, 2 *Campb.* 307. (*n.*) *ante*, *p.* 263. With regard to *the name of the payee*, it is no variance if a bill was drawn with the payee's name in blank, and in the declaration it is stated, that A. B. (a *bonâ fide* holder, who has inserted his own name,) was payee. *Attwood v. Griffin*, *Ry. & Moo.* 425. Nor is it a variance to state, that a bill is payable to A. B. where it is drawn payable to the order of A. B. *Frederick v. Cotton*, 2 *Show.* 8. With regard to the *place of payment*, where a bill is specially accepted, payable at a particular place, it is a variance to state it to have been accepted generally. *Ante*, *p.* 148. And so, if a bill or note is payable, generally, and not at a particular place, it is a variance to state it to be payable at a particular place. *Ante*, *p.* 147. A variance in the *sum payable* will be fatal, as where formerly Irish currency was described as English currency. *Kearney v. King*, 2 *B. & A.* 301. *ante*, *p.* 264. With regard to *the drawee*, a bill, not directed to any particular person, but with a memorandum of a place, instead of the drawee's name, and accepted by the person residing at that place, must not be described as *directed* to that person. *Gray v. Milner*, 2 *Stark.* 336. *sed quære*, *ante*, *p.* 22. A bill directed to A., or in his absence to B., and accepted by A., may be described as a bill directed to A. alone. *Anon.* 12 *Mod.* 447. *ante*, *p.* 22. Where the word "at," in very small letters, is inserted before the drawee's name, it is no variance to state, that the bill was directed to him. *Allan v. Mawson*, 4 *Campb.* 115. *Hunter's case*, *Russ. & Ry. C. C. R.* 511, *ante*, *p.* 19. With regard to *the names of the parties*, it has been stated, that a misdescription of the names of the parties to the action is ground of plea in abatement, and not of nonsuit. *Ante*, *p.* 264. But, a misdescription of the name of a person, party to the bill, but not party to the action, is a variance. *Ante*, *p.* 264. The suing one of several acceptors or drawers, and stating the bill to have been accepted or drawn by him alone, is not a variance. *Ante*, *p.* 265. Where it is stated that a person drew, accepted, or indorsed a bill, &c. and it appears that it was drawn, accepted, or indorsed by his authorised agent, it is no variance. *Ante*, *p.* 266. With regard to the *presentment*, the exact day laid is not material to be proved, it being stated that the bill was presented when it became due and payable. *Bynner v. Russell*, 1 *Bingh.* 23. 7 *B. Moore*, 286. *S. C. ante*, *p.* 270. If a bill is stated to have been presented by a particular person, it is not material to prove it presented by that person. *Boehm v. Campbell*, 1 *Gow*, 55. Where an *indorsement* was made after the bill became due, it is no variance to state it to have been made *before* it became due. *Young v. Wright*, 1 *Campb.* 140.

ante, p. 268. What will be a variance in the statement of the consideration, or "value received," has been already stated. *Ante, p.* 27.

Identity.] Where the handwriting of a particular person is to be proved, some evidence of the identity of that person must be given. Thus, in an action against the acceptor of a bill it is not sufficient merely to prove that a person calling himself by the same name accepted the bill, it must be proved that such person and the defendant are one and the same. *Memot v. Bates, B. N. P.* 171. *And see Middleton v. Sandford,* 4 *Campb.* 34. *Parkins v. Hawkshair,* 2 *Stark.* 239. In order to prove the identity of an indorser, it seems in general to be sufficient *primâ facie* evidence that a person in possession of the bill, and of the name by which it is indorsed, indorsed it, for in the absence of all evidence that the bill has got out of the hands of the right owner, possession is evidence of ownership. *See Bulkley v. Butler,* 2 *B. & C.* 441. 444. *Mead v. Young,* 4 *T. R.* 28. In an action by the indorsee against the acceptor of a bill of which E. S. was the payee, the plaintiff proved that a person calling himself E. S. came to C. having in his possession the bill in question, and also a letter of introduction (proved to be genuine) which was expressed to be given to a person introduced to the writer as E. S., and also another bill of exchange drawn by the writer of that letter. The bearer of these documents, after remaining ten days at C. during which time he daily visited the plaintiff, indorsed to him the bill in question and received value for it, and also a letter of credit. It was held that this was evidence of the identity of this person with E. S., the payee of the bill, sufficient to justify a verdict for the plaintiff. *Bulkley v. Butler,* 2 *B. & C.* 434. Where the plaintiff has given *primâ facie* evidence of the identity of an indorser, the defendant may prove that the bill was in fact indorsed by another person of the same name. *Mead v. Young,* 4 *T. R.* 28. *ante, p.* 23. Where a note was payable to H. S. and it appeared that there were two H. S.'s, father and son, Bayley, J. thought that the note was evidence of a promise to H. S. the father, but it appearing that H. S. the son (the plaintiff) had given instructions to bring the action, and was in possession of the note, the learned judge thought this sufficient. *Sweeting v. Fowler,* 1 *Stark.* 106. *ante, p.* 23. Where a bill was drawn by William Ostler upon William Ostler, it was held that proof that the bill was directed to William Ostler at the place which was the residence of the drawer when in England, and of his wife and family, coupled with a letter from the drawer, expressing his apprehension that the bill would be dishonored, was evidence to shew the identity of the drawer and drawee. *Roach v. Ostler,* 1 *M. & R.* 120.

Admissibility of agreement to control the operation of the bill.] Parol evidence is not admissible to vary the effect of a bill of exchange or promissory note. *Woodbridge v. Spooner*, 3 *B. & A.* 233. *Rawson v. Walker*, 1 *Stark.* 361. *Hoare v. Graham*, 3 *Campb.* 57. *Free v. Hawkins*, 8 *Taunt.* 92; *ante, p.* 233; *but see Pike v. Street*, 1 *M. & M.* 226, *ante, p.* 138. But a memorandum in writing, upon the bill or note, contemporaneous with the making of the instrument, is admissible to vary the effect of the bill or note. *Leeds v. Lancashire*, 2 *Campb.* 205. *Hartley v. Wilkinson*, 4 *Campb.* 127; *ante, p.* 13; *and see Stone v. Metcalf*, 1 *Stark.* 534. 4 *Campb.* 217, *S. C.*; *ante, p.* 14. Though the memorandum be made on a separate paper, yet if contemporaneous, it is admissible between the original parties and their representatives. *Bowerbank v. Monteiro*, 4 *Taunt.* 844; *and see Steel v. Bradfield*, *Id.* 227. *Gibbon v. Scott*, 2 *Stark.* 286. In the above case of *Leeds v. Lancashire*, Lord Ellenborough seems to have thought, that in the hands of a *bonâ fide* holder, who received the instrument as a promissory note, it might possibly be so considered; but as the indorsee must necessarily have notice of the memorandum when written on the note, it would seem, that even in his hands it could not be enforced contrary to the terms of the memorandum; and accordingly in another case, where the memorandum operated to render the instrument void as a promissory note, his Lordship held, that it could not be put in suit by an indorsee. *Hartley v. Wilkinson*, 4 *Campb.* 127. But when, as in *Bowerbank v. Monteiro*, (*supra*), the memorandum is on a separate paper, it would seem not to operate as against an indorsee for value and without notice.

Where in an action, on a note made in Prussia, payable 7 days after sight, it appeared, that the words "accepted on myself, payable everywhere" were written on the margin, and it was insisted, that the omission of these words in the declaration was a variance, Lord Ellenborough said, that the words constituted no part of the original instrument, their effect being merely to supply an acknowledgment of the sight of the bill; and that, although the entry was in fact contemporaneous with the note itself, in point of law its effect was subsequent. *Splitgerber v. Kohn*, 1 *Stark.* 125.

Payee against acceptor.] In an action by the payee against the acceptor, the plaintiff must produce the bill, and prove the acceptance of it by the defendant. If the action is on a foreign bill, which has been accepted by parol, some person, who was present when the parol acceptance was given, must be called.

Where the bill has been accepted in writing, proof that the handwriting is that of the defendant or of his agent, must be given. The handwriting of the defendant must be proved in

the usual manner; *see* 1 *Phill. Ev.* 465. 2 *Stark. Ev.* 651. *Rosc. Dig. Ev.* 54; and if there is a subscribing witness, he must be called. Where the acceptance is by an agent, the authority of the agent must be proved, either by calling him, or if the authority was in writing, by producing and proving it. *Johnson v. Mason*, 1 *Esp.* 90. So the authority may be proved, by shewing, that the defendant has recognised the act of the agent in this instance or in similar instances; *Neale v. Erving*, 1 *Esp.* 61. *Johnson v. Ward*, 6 *Esp.* 48; *ante, p.* 44. and where proof is given of instances of recognition, it seems unnecessary to produce the power of attorney. *Haughton v. Ewbank*, 4 *Campb.* 88.

Where the action is against several acceptors of a bill or makers of a note, the handwriting of each must be proved, unless they are partners; and then upon proof of the partnership it will be sufficient to shew that one of them accepted the bill, or made the note in the name of the firm. *Thwaites v. Richardson, Peake*, 16. In an action against James and John Palmer and Edward Hodgson, as joint and several makers of a promissory note, Hodgson pleaded a sham plea of judment recovered, to which there was a replication of *nul tiel record* and demurrer; James and John Palmer pleaded non-assumpsit. The handwriting of John and James Palmer only was proved at the trial, and for the plaintiffs it was said, that it was unnecessary to prove the handwriting of Hodgson, since he had by his plea admitted the note to be his; but Lord Kenyon ruled, that the handwriting of all the parties must be proved; he said, that between the plaintiffs and Hodgson it was unnecessary to prove the handwriting of the latter, he having by his plea of judgment recovered not denied it; but that the other defendants had a right to have the declaration proved, which could only be by proving the handwriting of all the defendants subscribed to the note, as the plaintiffs had averred in the declaration they had done. *Gray v. Palmers*, 1 *Esp.* 135. But after a partnership has been proved, an admission by one of the partners that the acceptance was made by him in the name of the firm, will be evidence against all the partners. In an action on a promissory note, subscribed by the firm of "Vingerhoed and Christian," the declaration stated the several christian names of each defendant. A witness swore, that he he knew the firm of "Vingerhoed and Christian," and that there were two persons of those surnames in the firm, but that he did not know their christian names; and that in a conversation with Vingerhoed, he admitted that the note was subscribed by him in the name of the firm. This was held sufficient to establish the action against both defendants. *Hodenpyl v. Vingerhoed, cor. Abbott*, 3 *July*, 1818. *Chitty*, 381, *7th ed.* So where several were sued as acceptors, and some

were outlawed, an admission by the defendant, who had pleaded *non assumpsit*, of his partnership with the defendants who were outlawed, was held to be sufficient evidence *against him*, of a joint liability in all the defendants. *Sangster v. Mazzaredo*, 1 *Stark.* 161. In general, after *primâ facie* evidence of partnership, the declaration of one partner is evidence against his co-partners; *Nicholls v. Dowding*, 1 *Stark.* 81; though the former be no party to the suit; *Wood v. Bradick*, 1 *Taunt.* 104.; *but see Rooth v. Jauney*, 7 *Price*, 198; and it is evidence, though made after the dissolution of partnership, if made as to a transaction which took place before the dissolution; *Ibid;* but not to bind the co-partner as to a transaction, which occurred previously to the partnership; unless a joint responsibility be proved as a foundation for the evidence. *Catt v. Howard*, 3 *Stark.* 3. (*Note* 55.)

The acceptance admits not only the handwriting of the drawer, so as to preclude the necessity of proving it, but also the capacity of the drawer, and the acceptor is thereby concluded from shewing that the acceptance is a forgery. "When a bill is presented for acceptance," says Mr. Justice Buller, "the acceptor only looks to the handwriting of the drawer, which he is afterwards precluded from disputing; and it is on that account that an acceptor is liable, even although the bill be forged." *Smith v. Chester*, 1 *T. R.* 654. If the bill is drawn by an agent, the acceptance admits the agency. Thus in an action by the payee against the drawers of a bill, which purported to be drawn by one Wood, as the agent of George, James, and John Parker, upon John Parker, there was no proof that Wood had authority from the defendants to draw the bill, but a witness swore that he, as the agent of John Parker the drawer, one of the defendants, had accepted it on his account, Lord Ellenborough said, that the bill having been accepted by order of one of the defendants, this was sufficient evidence of its having been regularly drawn, and further that the acceptor being likewise a drawer, there would be no occasion for the plaintiff to prove that the defendants had received express notice of the dishonor of the bill, as this must necessarily have been known to one of them, and the knowledge of one was the knowledge of all. *Porthouse v. Parker*, 1 *Campb.* 82. So in *Robinson v. Yarrow*, 7 *Taunt.* 455. 1 *B. Moore*, 150 *S. C. infra*, which was an action against the acceptor of a bill drawn by procuration, it was held that the acceptance admitted that such a firm as that of the drawer's existed, and that the agent was authorised to draw by procuration. So where a bill purports to be drawn by an aggregate firm, the acceptor by his acceptance is estopped from averring that it was not drawn by a firm, though in fact it was drawn by a single person. *Bass v. Clive*, 4 *M. & S.* 13. 4 *Campb.* 78 *S. C.* Nor can an acceptor set up the infancy of the drawer as a defence. *Taylor v. Croker*, 4 *Esp.* 187. *ante*, *p.* 56.

A promise to pay the bill, or the payment of part after it is due, is an admission of the acceptance. Thus where the acceptor of a bill came to the holder after it was due, and offered another bill in place of it, he being then unable to take it up, Lord Ellenborough was of opinion that the offer made by the acceptor to pay the bill to the plaintiff, who then held the bill with all the names on it, was a sufficient admission of the plaintiff's title, which was derived through several indorsements, and of the defendant's liability, so as to supersede the necessity of proving each person's handwriting. *Bosanquet v. Anderson*, 6 *Esp.* 43. *and see Helmsley v. Loader*, 2 *Campb.* 450. *Jones v. Morgan*, 2 *Campb.* 474. *post.* In order to operate as an admission of the acceptance, the promise must appear to be made by the defendant or by some one authorised by him; and therefore, where the evidence was that the holder sent the bill to the defendant's house for acceptance, that the defendant was not at home, and that the clerk who took the bill received for answer at the house, "that the bill would be taken up when due;" Lord Kenyon ruled that this alone, without some proof of the defendant's handwriting, or something to shew that the acknowledgment came from him, was insufficient. *Sayer v. Kitchen*, 1 *Esp.* 209. An admission of the acceptance in a notice to produce is sufficient. Thus where a notice to produce, signed by the defendant's attorney, had been served on the plaintiff, requiring him to produce a certain bill of exchange, (describing it) "and which said bill of exchange, draft, or order, was accepted by the said defendant," in an action against the acceptor on the bill, Abbott, C. J. said, "The defendant in his notice, has described the bill now produced, and has stated that such bill was accepted by the defendant, and this I conceive is *primâ facie* evidence of his acceptance." *Holt v. Squire, R. & M.* 282. An admission by the defendant of his handwriting as acceptor, may be given in evidence, though such admission was made during a treaty for compromise. Lord Kenyon said that certainly any admission or confession, made by the party respecting the subject matter of the action, obtained while a treaty was depending, under faith of it, and into which the party might have been led by the confidence of a compromise taking place, could not be admitted to be given in evidence to his prejudice, but he added, that the fact of a handwriting being a person's or not, stood on a different foundation; it was no way connected with the merits of the cause, and was capable of being easily proved by other means. *Waldridge v. Kennison*, 1 *Esp.* 143. An admission by the defendant, that the acceptance in his handwriting, will preclude him from shewing that the acceptance is a forgery. Thus in an action against the acceptor of a bill, where it appeared that the plaintiff, before he took it, had sent the bill to the defendant, to inquire whether the acceptance was his handwriting, who answered, that it was; on the defendant's counsel offering to

shew that the acceptance was a forgery, Lord Ellenborough said, that if the counsel wished to go into the evidence he had stated, he would admit it, as public justice might require an example to be made; but that after the evidence which had been given by the plaintiff respecting the acceptance, unless it was totally discredited, it could not entitle the defendant to a verdict. The case, as it then stood, did not rest on the acceptance being a forgery or not; it might not be the defendant's handwriting, and he might prove that it was not so by witnesses, and still the plaintiff be entitled to recover, for before the plaintiff took it, he sent the bill to the defendant, and upon the bill being offered to him, and being asked if the acceptance was his or not, he answered in the affirmative that it was. If he so accredited a bill, and induced a person to take it, he should hold him liable for the payment of it. *Leach v. Buchanan*, 4 *Esp.* 226. So in an action against an acceptor, where the defence was forgery, and it appeared that the defendant had been connected with one Taylor in business, and that he had paid several bills drawn, as the present was, by Taylor, and to which Taylor (as it was supposed) had written the acceptance in the defendant's name, Lord Kenyon ruled, that this was an answer to the case of forgery set up by the defendant, for though the defendant might not have accepted the bill, he had adopted the acceptance, and made himself thereby liable to the payment of it. *Barber v. Gingell*, 3 *Esp.* 60, *ante*, *p.* 44.

Where the bill is accepted, according to the provisions of the stat. 1 & 2. G. 4. c. 78. at a banker's or other place only, and not otherwise, or elsewhere, *ante*, *p.* 269. a presentment there must be averred and proved. But if an acceptance be unnecessarily stated to have been made to pay the bill at a particular place, it is not necessary to prove the averment of presentment at that place. *Freeman v. Kennell*, 1826. *cor. Abbott, C. J. Chitty*, 377. *7th Ed.*

Indorsee against acceptor.] In an action by an indorsee against the acceptor of a bill, in addition to the proof of acceptance, *vide ante*, the plaintiff must prove his own title as indorsee.

Indorsee v. acceptor — what the acceptance admits.] The acceptance, though it admits the hand-writing of the drawer, *vide ante*, *p.* 280, does not admit that of any of the indorsers, nor even the indorsement of the drawer, when the bill is made payable to his own order. Thus, in an action by the indorsee of a bill against the acceptor, it appeared at the trial, that when the bill was accepted there were several indorsements on it, but the plaintiff not being able to prove the hand-writing of the first indorser was nonsuited, and the court of K. B. refused to set the nonsuit aside. *Smith v. Chester*, 1 *T. R.* 654. So, in an action by the indorsee against the acceptor, where the indorse-

ment of the drawer to whose order the bill was payable was not proved, but it was insisted that the acceptance was an admission of the hand-writing of the drawer, and that by comparing that hand-writing with the indorsement, they would be found to correspond, Lord Kenyon said, that comparison of hands was no evidence; that if it were so, the situation of a jury, who could neither write nor read, would be a strange one, for it would be impossible for such a jury to compare the handwriting; and the plaintiff was nonsuited. *Macferson v. Thoytes, Peake,* 20. So, in an action against the acceptor of a bill, drawn payable to the order of the drawer, where it appeared that the bill had been drawn and indorsed by the drawer by procuration, and there was no proof given of the authority of the agent to indorse by procuration, Gibbs C. J. directed a nonsuit, which the court of C. P. refused to set aside. *Robinson v. Yarrow,* 7 *Taunt.* 455. 1 *B. Moore,* 150. *S. C.; and see Foster v. Clements,* 2 *Campb.* 17. It seems, that although at the time when the acceptance is made, the handwriting of the first indorser is upon the bill, the acceptance will not operate as an admission of the handwriting. Thus, in *Smith v. Chester,* 1 *T. R.* 654. *supra,* it appears, that when the bill was accepted there were several indorsements upon it, and yet it was held to be necessary to prove the handwriting of the first indorser. So it is said by Mr. Justice Park, in *Robinson v. Yarrow,* 7 *Taunt.* 458., that the case of *Smith v. Chester* decides, that even if the indorsement be there, the acceptance does not admit the indorser's handwriting, and that the acceptor is bound to look only to the face of the bill. So again in *Bosanquet v. Anderson,* 6 *Esp.* 43, *ante,* p. 281, Lord Ellenborough says, that though the drawee accepted the bill *with many names on it,* if they were laid in the declaration they should be proved. But in another case, where a bill was payable to two persons and indorsed by one, in the name of himself and the other, and the defendant had accepted it with this indorsement upon it, in answer to an objection, that as the payees were not partners, the bill ought to have been indorsed by both, Lord Ellenborough said, that the defendant having accepted the bill indorsed by one for himself and the other, could not now dispute the regularity of this indorsement. *Jones v. Radford,* 1 *Campb.* 83. (*n.*)

Indorsee v. acceptor — where the plaintiffs are partners, or sue in a particular capacity.] Where the plaintiffs are partners, and the bill has been indorsed in blank, and not specially to the firm, it will not be necessary for them to prove the partnership. Thus, in an action by the plaintiffs as indorsees, against the acceptor of a bill, indorsed by the payee in blank, it was objected, that no evidence was given that the plaintiffs were in partnership, or that the bill had been indorsed to them jointly;

but Lord Ellenborough said, that there was no occasion for any such evidence, for that the indorsement in blank conveyed a joint right of action to as many as agreed in suing on the bill. *Ord v. Portal*, 3 *Campb.* 239. So, where two persons sued as indorsees of two bills of exchange, which had been indorsed in blank, and the question was, whether it was incumbent on the plaintiffs to prove their joint title to sue on the bills, by shewing that they were partners, or by proving a transfer to them jointly; Lord Ellenborough held that they were not. *Rordasns v. Leach*, 1 *Stark.* 446. So where a bill had been indorsed in blank, and delivered to Attwood & Co., and after such indorsement, one of the firm of Attwood & Co. died, and the survivors sued on the bill, without stating themselves to be survivors; it was held that the action was rightly brought, and that it was not incumbent on the plaintiffs to prove their joint title to sue on the bill, by shewing that they were partners at the time of the indorsement, or by proving a transfer to them jointly. *Attwood v. Rattenbury*, 6 *B. Moore*, 579; *and see Low v. Copestake*, 3 *C. & P.* 300. But where a bill or note is made payable to a firm, or indorsed specially to a firm, who sue upon it, the plaintiffs must prove that they compose the firm. Thus, where in an action on a note, payable to Messrs. Waters, Jones, & Co., the only proof for the plaintiffs was the handwriting of the defendants; Abbott C. J. said, "In this case you must go further, and shew that Messrs. Waters, Jones, & Co. are the plaintiffs in this action. The distinction ought to be understood: where a bill or note is indorsed generally, the holders, whoever they may be, are as such intitled to recover; but where the promise is to pay a certain firm, it must be shewn that the plaintiffs are the persons who compose that firm." His Lordship permitted the cause to stand over for a few hours, until the necessary witness was obtained. *Waters v. Paynter*, *Chitty*, 389. *7th Ed.* So it is said, that where a bill is payable or indorsed specially to a firm, Lord Ellenborough often ruled, that in an action by the payees or indorsees, strict evidence must be given that the firm consists of the persons who sue as the plaintiffs on the record. 3 *Campb.* 239. (*n.*) In an action by Machell, Boucher, & Birkbeck, as indorsees of a bill, against the indorser, it appeared that the plaintiffs were the trustees of one Holder, an insolvent, and that Machell and Boucher were two of the partners in the firm of Langton & Co. The defendant being indebted to the estate of Holder, transmitted the bill in question to his clerk, with directions to deliver it to Langton & Co. on account of Holder's estate, the clerk accordingly indorsed and delivered it to Langton & Co. It was objected, that it was not competent to two of the firm of Langton & Co. to associate with themselves a third person, a stranger, for the purpose of bringing an action on the bill, without shewing that the bill had been transferred by Langton & Co. to the plain-

tiffs. *Per Lord Ellenborough*, "The bill having been indorsed, and delivered to Langton & Co. according to the defendant's direction, Langton & Co. had authority to appropriate it. Since it was paid to them on account of Holder's estate, if they had received the amount, it would have been money had and received by them on account of the estate; but the evidence as it stands proves the interest in the bill to be in Langton & Co. It would be sufficient to prove, that Langton & Co. consented to appropriate the bill to the three plaintiffs as trustees. If Langton & Co. had indorsed it to the plaintiffs, the right to sue would have been clear, or they might have transferred the right by a delivery of the bill; but without some evidence of this kind, the right to sue still remains in Langton & Co. Had it not been for the evidence of the particular transfer to Langton & Co., an indorsement in blank might have intitled the parties who bring the action to recover." The plaintiffs were nonsuited. *Machell v. Kinnear*, 1 *Stark.* 499.

Where the plaintiffs sue in a particular capacity, and it is stated in the declaration that the bill was indorsed to them in that capacity, the statement must be proved as laid. Thus, where the plaintiffs sued, as surviving assignees of a bankrupt, and the declaration stated that the bills were indorsed after the bankruptcy, to the plaintiffs, as surviving assignees, *Lord Tenterden* ruled, that though the plaintiffs might have declared generally, yet, that on this allegation they were bound to prove that the bills were indorsed, after the bankruptcy, to themselves, as surviving assignees. *Bernasconi v. Duke of Argyle*, 3 *C. & P.* 29.

Indorsee v. Acceptor—what indorsements must be proved, and how.] It is said that all the indorsements stated in the declation, though unnecessarily, must be proved. Thus, in an action on a note payable to L. T. or bearer, where the declaration stated an indorsement by L. T., Lord Ellenborough ruled, that as the indorsement was stated, though unnecessarily, it must be proved. *Wayham v. Bend*, 1 *Campb.* 175. So in an action by an indorsee against the acceptor, where the handwriting of the first indorser was proved, Lord Ellenborough said, that though the defendant accepted the bill with many names upon it, yet if they were laid in the declaration they should be proved. *Bosanquet v. Anderson*, 6 *Esp.* 44. *and see Sidford v. Chambers*, 1 *Stark.* 326. *post.* But where the first indorsement is in blank, the plaintiff may omit all the intermediate indorsements in his declaration, *ante*, *p.* 137. and in such case it will only be necessary to prove the handwriting of the first indorser. In an action by the indorsees of a bill against the acceptor, the first count stated all the indorsements—the second count, that plaintiffs were the immediate indorsees of the first indorser. Abbott, C. J. said, that all the indorsements must be proved, or struck out, although not stated in the declaration. "I re-

member," said his Lordship, " Mr. Justice Bayley so ruling and striking them out himself on the trial; and this need not be done before the trial." *Cocks v. Borrodaile, Chitty,* 392. *7th Ed.*

The indorsement is proved by calling a witness acquainted with the handwriting of the indorser. Where a bill was indorsed in the name of Habgood and Fowler, and the declaration stated that H. and F. indorsed the bill by procuration of T. Dixon, and it appeared in evidence that Dixon was a partner in the firm of Habgood and Co., in which there was no person of the name of Fowler, but that Dixon was accustomed to indorse the bills in the name of H. and F., and had so indorsed the bill in question; it was held that the allegation in the declaration was proved. *Williamson v. Johnson,* 1 *B. & C.* 146. 2 *D. & R.* 223. *S. C.*

Indorsee v. Acceptor—promise to pay dispenses with proof of the indorsements.] A promise to pay the bill is a sufficient admission by the defendant of the plaintiff's title, and will supersede the necessity of proving the indorsements. Thus, in an action by the indorsees against the acceptor of a bill, there was no direct proof that the name of one of the indorsers was of his handwriting; but it appeared that the name of that indorser, and of all the other indorsers, were upon the bill at the time of its being accepted, and that at the time of his accepting it, the defendant promised to pay the bill; upon this evidence, which was left by Ryder, C. J. to the jury, a verdict was found for the plaintiffs, and the court refused a new trial. *Per Cur.* " It is in general necessary to give actual proof that the name of every indorser is of his handwriting, but it is not necessary to do this in every case. In the present case it was a matter proper for the determination of a jury, whether the acceptance of the bill, where all the indorsements were upon it, together with the promise to pay, did not amount to an admission that the name of every indorser is of his handwriting, insomuch as such an admission would supersede the necessity of actual proof that the name of any indorser is of his handwriting." *Hankey v. Wilson, Sayer,* 223. So, in an action by a remote indorsee against the acceptor of a bill, where the handwriting of several of the indorsers was not proved, but it appeared that when the bill became due, the defendant came to the plaintiffs, and offered another bill in the place of it, he being then unable to take it up, Lord Ellenborough was of opinion that the offer made by the acceptor to pay the bill to the plaintiffs, who then held the bill, with all the names on it, was a sufficient admission of the plaintiff's title, so as to supersede the necessity of proof of each person's handwriting. *Bosanquet v. Anderson,* 6 *Esp.* 43. So, an action on a bill indorsed by the defendant to Sheckles by Sheckles, to Niblock & Co. and by the latter to the plaintiffs, in order to supersede the ne-

cessity of proving the handwriting of Sheckles, the plaintiffs gave in evidence a letter, written by the defendant to themselves, offering to give them a substituted bill, but stating that he had not money to take it up with, and adding, that he hoped it was not in the hands of Niblock & Co. Lord Ellenborough, remarking that the hope expressed by the defendant, that the bill was not in the hands of Niblock & Co., who were indorsers subsequent to Sheckles, shewed that he knew the channel through which the plaintiff's title had been derived, was of opinion that the evidence amounted to proof of their title through that channel. *Sidford v. Chambers*, 1 *Stark.* 326.

Indorsee v. Acceptor — admission of indorser.] The admission of his handwriting by an indorser, is not evidence in an action by the indorsee against the acceptor. A point was reserved at the sittings at Nisi Prius, whether the acknowledgment of the indorser of a promissory note, that the name indorsed on it was his handwriting, was sufficient to prove the indorsement in an action by the indorsee against the maker. The objection was, that no person's confession but the defendant's can be evidence, and that the indorser's hand must be proved. The objection was held good. *Hemings v. Robinson*, *Barnes*, 436. So, in an action by the indorsee against the acceptor of a bill, stated to have been indorsed by one Smith, in order to prove the handwriting of Smith, the plaintiff gave evidence that on being applied to, Smith admitted that the indorsement was his handwriting; but Abbott, C. J. said, that such admission, by a third person, could not affect the defendant. *Western v. Wilmott*, *5th July*, 1820. *Chitty*, 388. *7th Ed.* But in an action by the indorsee against the maker of a note, payable to one Sellier, where, in order to prove Sellier's handwriting, evidence was given that he had acknowledged the indorsement to be his, Lord Kenyon said, that he thought the evidence admissible and sufficient, as it went in derogation of the party's own title to the note; but he offered to reserve the case. The plaintiff had a verdict. *Maddocks v. Hankey*, 2 *Esp.* 647.

Payee v. Drawer.] In an action by the payee against the drawer of a bill, the plaintiff must prove, 1. the drawing of the bill; 2. presentment to the drawee or acceptor; 3. his default; 4. notice to the defendant of the dishonor.

Payee v. Drawer — the drawing of a bill.] The drawing of of the bill must be proved by evidence of the drawer's handwriting, and if drawn by an agent, by proving his authority. *Ante. p.* 792. If drawn in the name of a partnership, the partnership must be proved, and the handwriting of the partner who drew the bill. *Ante, p.* 279.

Payee v. Drawer — presentment to the drawee or acceptor.] It has been already stated in what cases it is necessary to present a bill *for acceptance, ante, p.* 141. and also, within what time such presentment must be proved to have been made. *Ante, p.* 142. So also, the persons to whom, *ante, p.* 147. the place at which, *ante, p.* 147 *to ante, p.* 152. the time within which, *ante, p.* 152. and the hours within which *ante p.* 159. presentment for payment must be proved to have been made, have been mentioned.

It has been also stated that the bankruptcy or insolvency of of the drawee or acceptor, will not be an excuse for not proving a proper presentment, *ante, p.* 166. nor will the mere knowledge on the part of the drawer, that the bill, if presented, is likely to be dishonored, *ante, p.* 167. but a part payment or a promise to pay, with knowledge that the bill has not been duly presented, is a waiver of the proof of presentment, *ante, p.* 167. and such evidence will support the averment of a presentment. *Ante, p.* 207. But under the allegation that the bill or note was presented the plaintiff cannot give in evidence that the drawee or maker could not be found. *Leeson v. Pigot,* 1788. *Bayley,* 324, *and see Smith v. Bellamy,* 2 *Stark.* 223.

Payee v. Drawer — notice of dishonor.] The plaintiff must prove that the defendant has had due notice of the dishonor of the bill. In what cases in general notice must be proved, has been already stated. *Ante, p.* 195. So by whom, *ante, p.* 197. and to whom *ante, p.* 198. *to p.* 204. it must be proved to have been given. The form of the notice has also been stated, *ante, p.* 196, and the mode in which it must be given. *Ante, p.* 204. So the time within which, *ante, p.* 207. and the hours of the day within which, *ante, p.* 211. it must be proved to have been served, have been mentioned. With regard to the service of the notice, we have seen that it is sufficient to put a letter containing the notice, and properly directed, into the post, and that the receipt of it will be presumed. In order to shew the delivery of notice, the plaintiff proved that he wrote a letter, addressed to the defendant, stating the bill had been dishonored; that this letter was put down on a table, where, according to the usage of his counting-house, letters for the post were always deposited, and that a porter carries them from thence to the post office, But the porter was not called, and there was no evidence as to what had become of the letter after it was put down upon the table. Lord Ellenborough said, "You must go further; some evidence must be given that the letter was taken from the table in the counting-house and put into the post office. Had you called the porter, and he had said, that, although he had no recollection of the letter in question, he invariably carried to the post office all the letters found upon the table, this might have done; but I

cannot hold this general evidence of the course of business, in the plaintiff's counting house to be sufficient." A letter was then put in from the defendant, in which he acknowledged the receipt of a letter from the plaintiffs of the 14th November, (the day on which the letter in question was written), without referring to its contents, and Lord Ellenborough said, he would presume that this was the letter written to inform the defendant of the dishonor. *Hetherington v. Kemp*, 4 *Campb.* 193. In order to prove the delivery of a notice of dishonor to one Finlay, the plaintiff called a witness, who stated that she carried a letter from the plaintiff to Finlay, inclosing the notes and informing him that they were returned as not being likely to be paid; that she went to the house where Finlay lodged, for the purpose of delivering the letter to him; that she inquired for him from the woman who kept the house, and was informed that he was not at home; that she then left the letters inclosing the notes with this woman, and that the next morning the letters and bills were thrown into the plaintiff's house by some person or persons unknown. Lord Kenyon was of opinion that this was sufficient presumptive proof that the letter had come to Finlay's hands. *Stedman v. Gooch*, 1 *Esp.* 5. Where in order to prove the delivery of notice, a clerk was called, who stated that he had compared two copies of the notice (one of which he produced), and that upon the same day he carried a letter from the plaintiff to the defendant, but did not know the contents, Lord Ellenborough was of opinion that this was not sufficient. The plaintiff then proved the service of a notice on the defendant, calling upon him to produce a letter from the plaintiff giving him notice of the dishonor of the bill mentioned in the declaration. On the defendant's counsel objecting that it was not proved that the defendant was in possession of the original notice, so as to authorise the reading of a copy, Lord Ellenborough said, "I think certainly that there is a looseness in this evidence, and you may afterwards move the court upon it. Supposing, however, that the paper delivered had been a perfect blank, or contained matter wholly unconnected with the dishonor of the bill, you might have produced it and shewn the fact to be so, since it is evident what letter was the object of the plaintiff's notice, This is the first time the identity of such a letter has been so minutely scrutinized, and the proof might, in many instances, be attended with great difficulty, as where letters after being written are placed upon the table, it might afterwards be exceedingly difficult to identify them with those afterwards put in the post office." *Roberts v. Bradshaw*, 1 *Stark.* 28.

Payee v. Drawer — notice — contents of, how proved.] Where the notice is in writing, and it remains in the custody of the defendant, and no duplicate or copy has been kept, the plaintiff may give evidence of its contents without previously proving

the service of a notice to produce it. Thus, where a witness called to prove the notice, said that on the day the bill became due he left a written notice of dishonor at the defendant's house, Le Blanc J. after argument, ruled that secondary evidence of the contents of this notice might be given, without notice to produce it, and compared it to a notice to quit. A verdict having been found for the plaintiff, in the ensuing term a motion was made to set it aside as contrary to evidence, but the judge's ruling at Nisi Prius was not questioned. *Ackland v. Pearce*, 2 *Campb.* 601. So a duplicate original, or copy made from the original, may be given in evidence to prove the contents, without proving a notice to produce the original. Where in order to prove the notice, a witness was called, who stated that on the day on which the bill was dishonored, the plaintiff gave him two papers to compare with each other, one of which was produced and purported to be a notice of the dishonor of the bill in question, Lord Ellenborough said that a letter acquainting a party with the dishonor of a bill, was in the nature of a notice, and that it was unnecessary to prove notice to produce such a letter. *Roberts v. Bradshaw*, 1 *Stark.* 28. In an action by the indorsee against the indorser of a bill, the plaintiff offered to prove notice of the dishonor, (which had been given by letter,) by a copy of the letter taken at the time it was written, but proved no notice to produce the letter. Dallas, C. J. admitted this evidence, and on motion to set aside the verdict for the plaintiff, the court of C. P. refused the application. *Per Dallas, C. J.* "It appeared to me on the trial, that the objection there taken, and now supported, was well founded. So I thought originally. So Lord Ellenborough thought at one time. So Lord Kenyon thought. But at the suggestion of counsel, and on a reference made to some of the later cases, a verdict was taken for the plaintiff, and I saved the point for the opinion of this court. In the case of *Roberts v. Bradshaw*, (*supra*,) Lord Ellenborough expressly says that a letter acquainting a party with the dishonor of a bill is in the nature of a notice, and that it is unnecessary to prove a notice to produce such a letter. I own I do not see any great inconvenience which can arise in practice from giving notice to produce such a letter, but still the question comes to this, whether in substance and reason, the law is not, by the late determinations, settled, that where the copy of a letter containing notice of the dishonor of a bill is tendered in evidence, such copy is admissible without proving a notice to the party in whose possession the letter itself may be, to produce it. I am not now going to enter into nice distinctions between a copy and a duplicate original, though I cannot see any great difference between a duplicate original and a copy made at the time; but feeling the necessity that there should be an uniformity of practice in the courts, we will inquire what the practice of the court of King's Bench is on like occasions." On a subsequent

day his Lordship said, "In this case we see no reason to change the opinion we in part expressed when the question was last before the court; but as a matter of general practice, we wished to collect the opinion of other judges, and the result is, that the copy of an original letter, giving notice of the dishonor of a bill, is admissible without notice to produce the original letter, and consequently that in this case the verdict must stand." *Kine v. Beaumont*, 3 *B. & B.* 288. 7 *B. Moore*, 112. *S. C.* See also *Colling v. Treweek*, 6 *B. & C.* 394. These decisions may be considered as overruling the authority of *Langdon v. Hulls*, 5 *Esp.* 157, where Lord Ellenborough was of opinion that the plaintiff could not give evidence of the contents of a letter containing a notice of dishonor, not having given notice to produce it; and also, as overruling *Shaw v. Markham, Peake*, 165, where Lord Kenyon ruled the same way. But where in an action against the indorser of a bill, it became necessary to prove that notice of the dishonor of *other bills* had been given to the defendant, for which purpose examined copies of letters containing such notices were offered, Abbott, C. J. ruled that a notice to produce such letters was necessary, and that the case did not fall within the exception of bills produced, and the subject matter of the action, where no notice is necessary. *Lanauze v. Palmer*, 1 *M. & M.* 31.

Payee v. Drawer—notice—time of giving how proved.] The time of giving the notice may be proved by the person who delivered it, who should be able to state the precise day on which it was delivered. *Lawson v. Sherwood*, 1 *Stark.* 314. *ante*, *p.* 207. Where the notice has been sent in a letter by the post, the post-mark will be evidence that the letter was in the office to which the mark belongs at the time such mark specifies; but the mark must, as it seems, be proved to be genuine. *Plumer's case, Russ. & Ry. C. C. R.* 264. *Kent v. Lowen*, 1 *Campb.* 177. *Fletcher v. Braddyl*, 3 *Stark.* 64. *Archangelo v. Thompson*, 2 *Campb.* 623. *Cotton v. James*, 1 *M. & M.* 275.

Payee v. Drawer — notice — proof of when excused.] It has been already stated, that when the defendant, with knowledge of the laches, has paid part, or has promised to pay the bill, *ante*, *p.* 219, it will not be necessary for the plaintiff to shew that the defendant had notice of the dishonor. In such case, therefore, it will be sufficient for the plaintiff to prove such part payment, or promise, and (where the circumstances themselves do not import knowledge of the laches) that the defendant at the time of making the promise had notice of the fact of the dishonor, *ante*, *p.* 219, but where the circumstances are such as themselves import knowledge of the laches, as where the promise is made after the bill is due, and after the period when the defendant ought to have received

notice of the dishonor, it will not be necessary for the plaintiff to give any evidence that the defendant had actual notice of the laches. *Ante, p.* 220. The cases in which want of effects of the drawer in the hands of the drawee or acceptor, will be an excuse of notice, have already been stated. *Ante, p.* 221. So it has been shewn that notice is not excused by the bankruptcy or insolvency of the drawee, or of the person to whom the notice ought to be given, *ante, p.* 229, nor by an agreement, not appearing on the face of the bill or note, that it shall not be enforced. *Ante, p.* 232. Whether notice is excused in case of accident, &c. has also been considered. *Ante, p.* 233. It has likewise been stated in what cases the giving of notice is excused, where the holder is ignorant of the residence of the party to whom the notice ought to be given. *Ante, p.* 234.

Payee v. Drawer—protest—how proved.] The protest of a bill drawn up abroad by a foreign notary, proves itself. Thus, where such a protest was produced, and it was insisted on that the party should prove it, or at least give some account how he came by it; Holt, C. J. ruled it not to be necessary, for that would destroy commerce and public transactions of this nature. *Anon.* 12 *Mod.* 345. So it has been said, that on the trial of a thing beyond sea, the testimony of a notary public there is good proof, and that such proof as they admit beyond sea, we admit here. *Per Ley C. J.* 2 *Rolle, R.* 346. Where it became necessary to prove the presentment of a bill drawn abroad, upon a person in England, and the plaintiff's counsel offered as evidence, a notarial protest under seal, stating the fact of presentment in the usual form, and contended that by the usage of merchants, a protest under a notary's seal was evidence of the dishonor, Lord Ellenborough said, "The protest may be sufficient to prove a presentment which took place in a foreign country, but I am quite clear that the presentment of a foreign bill in England must be proved in the same manner as if it were an inland bill." *Chesmer v. Noyes,* 4 *Campb.* 129. A protest made in England must, it is said, be proved by the notary who made it, and by the subscribing witness, if any. *Chitty,* 405. *7th ed.*

Indorsee v. Indorser.] In an action by the indorsee against the indorser of a bill, the plaintiff must prove, 1. the handwriting of the defendant; 2. the indorsements between the plaintiff and defendant, as stated in the declaration, *ante, p.* 285; 3. presentment to the drawee or acceptor, and the dishonor, *ante, Chapter* VII. *and p.* 288; 4. notice of dishonor to the defendant, *ante, Chapter* IX. *& p.* 288.

Indorsee v. Indorser—admission of the drawing and prior indorsements.] In an action against the indorser of a bill, it is not necessary to prove the hand of the drawer, for though it be

forged, the indorser is liable. *Per Holt C. J. Lambert v. Oakes*, 1 *Lord Raym.* 444. In an action by the indorsee against the indorser of a bill of exchange, the declaration stated several indorsements *prior* to that of the defendant which was immediately to the plaintiff; Lord Ellenborough at first doubted, whether it was necessary to prove these indorsements, but for the plaintiff it was contended, that the defendant's indorsement admitted all antecedent indorsements; that even if they were forged, he would be liable; that he was to be considered as the drawer of a new bill of exchange, and that his contract was very different from that of the acceptor, who only undertook to pay to the payee or his order, and against whom therefore, a title through the payee must be established. Lord Ellenborough was of this opinion, and the plaintiff had a verdict. *Critchlow v. Parry*, 2 *Campb.* 182. But in a very late case, it was much doubted, whether by indorsing a bill the indorser warrants the *genuineness* of the prior indorsements. *East India Company v. Tritton*, 3 *P. & C.* 280. 5 *D. & R.* 214 *S. C.* (*Note* 53.)

Accommodation acceptor v. drawer.] In an action by the acceptor of a bill against the drawer, for whose accommodation he accepted, the plaintiff, whether the action be a special assumpsit or for money paid, *ante*, *p.* 253, must prove the drawing of the bill by the defendant, that he accepted it at the defendant's request, and without consideration, and that he has paid the bill. Although in one case it was ruled, that a general receipt on the back of a bill imports that the bill has been paid by the acceptor, *Scholey v. Walsby, Peake*, 24, *ante*, *p.* 250, yet the plaintiff when he produces the bill with such a receipt, should be prepared to prove that it has been negotiated after acceptance, and that the receipt is in the handwriting of some person entitled to demand payment. In an action by the accommodation acceptor, against the drawer of certain bills, the bills were produced receipted in the usual form of bills paid, but it did not appear by whom the receipts were written. For the plaintiff it was contended, that this was *primâ facie* evidence of payment. *Per Lord Ellenborough*, "Shew that the bills were once in circulation, and I will presume that they got back to the acceptor's hands by his having paid them. But when he merely produces them, how do I know that they were ever in the hands of the payee or of any indorsee, with his name upon them as acceptor? It is very possible, that when they were left for acceptance, he refused to deliver them back, and having detained them ever since, now produces them as evidence of a loan of money. Nor do I think the receipts carry the matter a bit further, unless you shew them to be in the handwriting of the defendant, or some other person authorised to receive payment of the bills. A man cannot be allowed to manufacture evidence for himself, at the risk of being convicted of forgery, and it is possible that

though the bills are unsatisfied, these receipts may have been fraudulently indorsed, without the plaintiff's privity. The fact of payment still hangs in doubt, and you must do something more to turn the balance. Prove the bills out of the plaintiff's possession accepted, and I will presume that they got back again by payment. If you do not, the plaintiff must be called." A witness afterwards proved, that the defendant had acknowledged the debt, and the plaintiff had a verdict. *Pfiel v. Vanbuttenberg*, 2 *Campb.* 439. But where in an action on a covenant to pay the amount of all bills, drawn by the defendant on the plaintiffs, and accepted by them, the plaintiffs produced bills of exchange, drawn by the defendant on them, and it was insisted for the defendant, that the plaintiffs must go farther and prove payment of the bills, Lord Ellenborough ruled it to be sufficient that the bills were drawn by the defendant on the plaintiffs, and had come out of the hands of the latter. *Gibbon v. Featherstonhaugh*, 1 *Stark.* 225.

Payee against maker of note.] In an action by the payee against the maker of a promissory note, the plaintiff must prove the making of the note, and when it is payable at a particular place, a presentment at that place. *Ante, p.* 151. The making of the note is proved in the usual manner, by evidence of the handwriting of the maker; and where there is an attesting witness, such witness must be called, or if dead, his death and handwriting must be proved. *Kay v. Brookman*, 1 *M. & M.* 386. Where the promise to pay is general, no presentment to the maker need be proved; but where the note contains in the body, and not merely in a memorandum at the foot, a promise to pay at a particular place, a presentment at such place must be proved, *ante, p.* 151, but notice of dishonor to the maker is unnecessary. *Ante, p.* 200. What is a sufficient presentment, where the note is payable at a particular place, has been already stated, *ante, p.* 151. a note payable at two places may be presented at either. *Ante, p.* 152. In an action on a note payable on demand, a demand need not be proved. *Ante, p.* 269. The note may be given in evidence under the money counts. *Ante, p.* 253.

Indorsee against maker of note.] In addition to the proofs mentioned, under the last head, the plaintiff must prove the indorsements stated in the declaration. *See ante, p.* 285 *to p.* 287. In declaring upon a note made to payee *or bearer*, the indorsements need not be mentioned; but if stated, they must, as it seems, be proved. *Waynam v. Bend*, 1 *Campb.* 175. *ante, p.* 285. The note will not be evidence under the common counts. *Ante, p.* 255.

Indorsee against indorser of note.] The plaintiff must prove

the defendant's indorsement, the presentment to the maker, and his default; *ante, p.* 288, and notice to the defendant of the dishonor. *Ante, p.* 288. Between immediate parties, the note will be evidence under the money counts. *Ante, p.* 253.

Defence.] The nature of the various defences to actions on bills of exchange and promissory notes, may be gathered from the chapter relating to the liability of the parties. In the present chapter, the cases respecting the evidence necessary to support the defence of want of consideration, and of the statute of limitations, will be considered.

Defence — want of consideration.] In what cases a want of consideration, whether total or partial, is a good defence, has been already stated. *Ante, p.* 104 *to p.* 107. So between what parties such a defence may be sustained, *ante, p.* 111; and likewise what amounts to a want of consideration. *Ante, p.* 108. *to p.* 111. Where this defence is relied on, the defendant should give a notice to the plaintiff to prove the consideration, *ante, p.* 123, *and Appendix*; and should be prepared at the trial to prove the service of such notice. He must also give some evidence tending to throw suspicion on the title of the plaintiff, who will not otherwise be compelled to prove his title. *Ante, p.* 123. But if, instead of putting the plaintiff to shew the consideration, the defendant himself intends to give evidence to impeach it, no notice to the plaintiff is necessary. *Ante, p.* 124. Where the plaintiff sues as indorsee, it will be sufficient for the defendant, sued as acceptor, to prove *primâ facie*, that there was originally no consideration for the bill, which throws it on the plaintiff, to shew that either he or some person through whom he claims, gave value for the bill. *Thomas v. Newton*, 2 *C. & P.* 606. So in an action by the indorsee of a bill, drawn by one Whitton, against the acceptor, the plaintiff made out a *primâ facie* case; but Whitton being called to prove the handwriting of the parties, it appeared, on his cross-examination, that he had never received any consideration for the bill, and had been tricked out of it by fraud: Lord Ellenborough held, that on this ground the plaintiff was bound to prove what consideration he gave for it; and as he was not prepared to do so, he was nonsuited. *Rees v. Marquis v. Headfort*, 2 *Campb.* 574. So where in an action by the indorsee against the drawer of a bill, it appeared, that the defendant gave the bill under duress, abroad, and under a threat of personal violence and confiscation of his property, and that it was given without consideration, Lord Ellenborough ruled, that the defendant not being a free agent when he drew the bill, it was incumbent on the plaintiff to give some evidence of consideration, and no such evidence being given, he was nonsuited. *Duncan v. Scott*, 1 *Campb.* 100. (*See Note* 20.)

In order to prove the want of consideration, the declarations of a former holder of a bill are not in general admissible. Thus, in an action by the indorsee against the acceptor of a bill, drawn by one Clifford, it appeared, that Clifford having been arrested, had applied to the plaintiff to become one of his bail to the sheriff, which he agreed to on being indemnified; Clifford then deposited the bill with him, on condition that it was to be returned, when the purpose for which it was deposited was answered. The action against Clifford was afterwards settled, and the plaintiff was discharged of his liability as bail. Clifford, however, was indebted to the plaintiff for goods sold, &c. For the defendant a witness proved, that he had heard Clifford say, that the bill had been accepted by the defendant for his accommodation, and without any consideration. It appeared, however, that the declaration had been made by him after the bill was indorsed to the plaintiff, and before it was due. The learned judge received this evidence, reserving its admissibility for father consideration. The court of K. B. held the evidence inadmissible. *Per Bayley J.*, "I think the defendant had not laid a sufficient foundation to let in evidence of Clifford's declaration. If the plaintiff had brought the action as trustee for Clifford, and rested solely on the title of the latter, then a declaration of Clifford would have been admissible; but here the plaintiff rests upon the strength of his own title, as against Clifford, and therefore, it is not competent to the defendant to give in evidence the declarations of Clifford, made after he had parted with, and whilst the bill was current. If the plaintiff insisted upon recovering through Clifford's title, there are cases in which it has been held that such declarations are admissible." *Shaw v. Broom*, 4 *D. & R.* 730. Where the declarations of the former holder of a bill had been received in evidence, it not being shewn that he was in possession of the bill, at the time he made the declarations, the court of C. P. granted a new trial. *Per Best, C. J.* "In order to render these declarations receivable, it ought to have been shewn that the party making them was the holder of the bill at the time; they are admissions, and as such receivable only when they are supposed to be adverse to the interest of the party." *Pocock v. Billing*, 2 *Bingh.* 269. *R. & M.* 127. *S. C.* In an action by the indorsees against the acceptor of a bill, the defendant offered to give in evidence the declarations of the drawer, made while he was in possession of the bill; but the plaintiff's counsel relying on *Shaw v. Broom*, (*supra*), contended that they were not admissible; to which Abbott C. J. assented, and rejected the evidence. *Smith v. De Wruitz*, *R. & M.* 212. So in an action by the indorsee against the maker of a promissory note, payable with interest on demand, for which the plaintiff had, it seems, given value to the payee, evidence was offered for the defendant of de-

clarations made by Arnitt the payee, when he was the holder of the note, shewing that he had given no value for it to the maker. The chief justice rejected this evidence, and the court of K. B. refused a new trial. *Per Bayley J.* "I am of opinion, that the declarations made by Arnitt are not admissible in evidence. The defendant did not identify Arnitt with the plaintiff. Had it been shewn, that the latter took the note without giving a consideration for it, or after it became due, the case would have been very different. Although there was no direct evidence of the consideration given by the plaintiff to Arnitt, yet dealings between them were proved, whence the existence of a valuable consideration might be fairly presumed. Neither does it appear to me that this note could be considered as over due." *Barough v. White*, 4 *B. & C.* 325. 2 *C. & P.* 8. *S. C.*

Where the title of the plaintiff, and of the party whose declarations are offered in evidence, is identified, as where the plaintiff took the bill from him after it became due, there such declarations are admissible, as in the following case: a bill of exchange had been given for the accommodation of the drawer; whilst in the hands of the latter he made a declaration, that it was an accommodation bill, and that the acceptor had received no value. Long after it was due, the drawer indorsed the bill to the plaintiff, all accounts between the drawer and acceptor being then closed. Upon which it was contended, that the declaration of the drawer was admissible to affect the plaintiff's title, on the ground, that what would be a good defence against the drawer would be equally a good defence against the indorsee; and for this reason *Holroyd J.* admitted the declaration of the drawer. *Benson v. Marshal, cited*, 4 *D. & R.* 732.

Where a witness states, that a bill was accepted for value received, but declines saying what the consideration was, on the ground that it may subject him to a *qui tam* action, this will not amount to proof of a good consideration. *Dandrige v. Corden*, 3 *C. & P.* 11.

Defence—statute of limitations.] The plea of the statute of limitations is a good defence to an action on a bill of exchange or promissory note. In general the statute only begins to operate from the time when the party might have sued upon the bill or note. Thus, where a bill is drawn, payable after date, for the amount of money lent by the payee to the drawer at the time of drawing, the statute only runs from the time of the bill becoming due. *Wittersheim v. Lady Carlisle*, 1 *H. Bl.* 631. So, where a note was not to be delivered to the payee till certain conditions were performed, Lord Ellenborough ruled, that the statute did not begin to run till the delivery of the note. *Savage v. Aldren*, 2 *Stark.* 232. And so in an action, by an administrator, upon a bill of exchange payable to the testator,

but accepted after his death, it was held, that the statute begins to run from the time of granting the letters of administration, and not from the time the bill becomes due, there being no cause of action until there is a party capable of suing. *Murray v. East India Co.* 5 *B. & A.* 204. Upon a bill, payable after sight, no debt arises until a presentment for payment, and without such presentment, therefore, the statute does not begin to run. *Holmes v. Kerrison*, 2 *Taunt.* 323. And, where a note was made payable "twenty-four months after demand," and dated more than six years ago, but had been presented within six years, Abbott C. J., on the authority of the above case, ruled that the statute was not a bar. *Thorpe v. Booth*, *Ry. & Moo.* 389. In the case of a bill or note, payable on demand, the statute, as it seems, begins to run from the date. It has been ruled by Sir J. Mansfield C. J., that a promissory note, payable on demand, is payable immediately, and that the statute runs from the date of the note, and not from the time of demand. *Christie v. Fonsick*, 1 *Selw. N. P.* 181. 4*th Ed.*; *and see Capp v. Lancaster*, *Cro. Eliz.* 538. *Rumball v. Ball*, 10 *Mod.* 38. So where the statute of limitations was pleaded to an action on a promissory note, payable on demand, and it was insisted that the note being payable on demand, made it an executory contract, and, therefore, no debt due till a demand, it was answered that is is a present duty without a demand, and the difference is, where the debt is to arise upon a collateral act to be done, and so the whole court held. *Anon.* 15 *Vin. Ab.* 103.

Statute of limitations—revival of promise.] By stat. 9 Geo. 4. c. 14. no acknowledgment or promise by words only, shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of *Statute* 21 *Jac.* 1. *c.* 16. or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby. It is also enacted, That where there shall be two or more joint contractors, or executors, or administrators of any contractor, no such joint contractor, executor or administrator, shall lose the benefit of the said enactment, (21. *Jac.* 1.) so as to be chargeable in respect or by reason only of any written acknowledgment or promise made, and signed by any other or others of them; provided always, that nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever; provided also, that in actions to be commenced against two or more such joint contractors, or executors, or administrators, if it shall appear at the trial or otherwise, that the plaintiff, though barred by the said recited act, or this act, as to one or more of such joint con-

tractors, or executors, or administrators, shall nevertheless be intitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise judgment may be given and costs allowed for the plaintiff as to such defendants, against whom he shall recover, and for the other defendant or defendants against the plaintiff.

And by the third section, it is enacted, That no indorsement or memorandum of any payment, written or made after the time appointed for this act to take effect, upon any promissory note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the said statute.

This statute began to operate on the 1st January, 1829. Though it alters the law respecting verbal promises, it seems to leave the authority of the decisions relating to the payment of principal or interest untouched.

In an action on a joint and several promissory note, against the representatives of a surety who had signed the note, it was held, that payment of interest by the principal, within six years and during the lifetime of the surety, was sufficient to take the case out of the statute, as against the representatives. *Burleigh v. Stott*, 8 *B. & C.* 36. So payment of a dividend, under a commission, against one of the makers of a joint and several note, has been held to take the case out of the statute, in an action against the other maker. *Jackson v. Fairbank*, 2 *H. Bl.* 340; *and see Brandram v. Wharton*, 1 *B. & A.* 463. But where A. & B. made a joint and several promissory note, and A. died, and ten years after his death, B. paid interest upon the note; in an action against the executors of A., it was held that the payment of interest by B. did not take the case out of the statute, so as to make the defendants liable. *Atkins v. Tredgold*, 2 *B. & C.* 23.

For the law as it stood before the passing of the statute, 9 G. 4. c. 14; *see Whitcombe v. Whiting*, *Dougl.* 652. *Halliday v. Ward*, 3 *Campb.* 32. *Holme v. Green*, 1 *Stark.* 488. *Leaper v. Tatton*, 16 *East*, 420. *Easterby v. Pullen*, 3 *Stark.* 186. *Pillam v. Foster*, 1 *B. & C.* 248. 2 *D. & R.* 363. *S. C. Perham v. Raynal*, 2 *Bingh.* 306.

Competency of witnesses — drawer.] The drawer of a bill is in general a competent witness, either for the plaintiff or for the defendant. Thus, in an action against the acceptor of a bill, the drawer was called by the plaintiff to prove the defendant's handwriting, which was stated by the defendant to be a forgery, on it being objected that the witness was not competent, because in case the jury found the bill a forgery, he might be committed and tried for a capital offence; Lord Kenyon said, "If any interest in the event of this cause could be brought

home to the witness, or the verdict on it could be given in evidence in his favor in another cause, that might disqualify him, but I see here no interest sufficient to impeach his competency. The objection to the competency of a witness, arises from his having a civil interest, not from any bias he may have from an apprehension that the testimony which he is about to give may have an effect in a criminal proceeding. That is matter of observation as to his credit, but it is no objection to admissibility." The witness was admitted. *Dickinson v. Prentice*, 4 *Esp.* 32. So in an action against the acceptor, the drawer and payee may be called to prove his own indorsement. *Wellsheir v. Cox, cor. Abbott C. J.* 1826. *Chitty*, 416. *7th Ed.*

In an action against the acceptor of a bill, the defendant called the drawer (who had indorsed the bill to the plaintiff for an usurious consideration) to prove the usury, and Lord Kenyon thought that a release from the acceptor was necessary. *Rich v. Topping, Peake*, 224. But in a subsequent case where, in a similar action, the drawer was produced to prove usury in the indorsement of the bill by himself, Lord Ellenborough said, he was admissible on the ground of the verdict not being evidence in any trial against the witness, whose name was on it; that the usury did not destroy the bill, so that it could never be produced again, for that the plaintiff might sue on it, and recover against the witness. *Brard v. Ackerman*, 5 *Esp.* 119. In an action by the indorsee against the acceptor of a bill, the drawer was called for the defendant to prove that he had paid the bill. Lord Kenyon admitted his evidence, but it appearing that he had received due notice, and was therefore liable himself on the bill, his Lordship inclined to think this objection good. *Humphrey v. Moxon, Peake*, 52. But supposing him still liable, the verdict in this action would not be evidence in an action brought by the indorsee against himself; and in defeating this action, therefore, he would be rather speaking against his own interest. In an action by the indorsee against the acceptor of a bill, one Taylor, the drawer and first indorser, was called for the defendant to prove that he had paid the bill. Taylor was at the time a prisoner on a charge of forging the bill in question, but Lord Kenyon refused to reject his testimony. *Barber v. Gingell*, 3 *Esp.* 60. In an action by the payee against the acceptor, the defence was, that the plaintiff had discharged the drawer as to part of the bill, and the acceptor for the residue, to establish which the drawer himself was called, and upon argument admitted by Lord Ellenborough. *Pool v. Bousfield*, 1 *Campb.* 55.

But in an action against the acceptor of a bill accepted for the accommodation of the drawer, the latter, or his wife, is not a competent witness for the defendant, since, in case the plaintiff should recover, the drawer would be liable to the defendant

in an action for money paid to his use, and also for the costs. Thus where, in an action by the indorsee against the acceptor of an accommodation bill, where the wife of the drawer was called to prove usury in the indorsement of the bill by himself to one Reeves, who had indorsed it after due to the plaintiff, the court of Common Pleas held that she was not a competent witness. *Per Mansfield C. J.* "An objection was taken to the witness, who was the wife of the drawer, and the objection was overruled on the ground that it is now the practice to receive persons whose names are on bills of exchange as witnesses to impeach such bills. And so it is; but here the question is, inasmuch as this was an action against the acceptor, whether she could be received as against the acceptor, the drawer, as it was contended, being interested to defeat the action; the doubt was this, the drawer has an interest to protect the acceptor; the acceptor will have a right against the drawer, to make the drawer pay, not only the money, but all damages the acceptor may sustain by being sued for it, for the drawer of an accommodation bill is bound to indemnify the acceptor against the consequences of an acceptance made for the accommodation of the drawer; we are therefore of opinion, that the drawer cannot be a witness." *Jones v. Brooke*, 4 *Taunt.* 464. *Hardwick v. Blanchard, Gow*, 113. *Bottomley v. Wilson*, 3 *Stark.* 148. When the witness has become bankrupt, and the costs are provable under his commission, and he has obtained his certificate, he is then admissible. *Brind v. Bacon*, 5 *Taunt.* 183. *Moody v. King*, 2 *B. & C.* 558. So he may be rendered competent by a release from the acceptor. *Cartwright v. Williams*, 2 *Stark.* 340. *See also Sewell v. Stubbs*, 1 *C. & P.* 73.

Competency of witnesses—indorser.] In an action by the indorsee against the drawer or acceptor of a bill, the indorser is in general a competent witness, either for the plaintiff or for the defendant; for the plaintiff, because, though the plaintiff's succeeding in the action, may prevent him from calling for payment from the indorser, it is not certain that it will, and whatever part of the bill or note the indorser is compelled to pay, he may recover again from the drawer or acceptor; for the defendant, because, if the plaintiff fails against the drawer or acceptor, he is driven either to sue the indorser, or to abandon his claim. *Bayley*, 422. Thus in an action by the indorsee of a bill against the acceptor, Lord Ellenborough permitted the plaintiff to call the indorser to prove his own handwriting. *Richardson v. Allan*, 2 *Stark.* 334. So in an action by the indorsee against the drawer of a bill drawn for the accommodation of the payee, the latter was called to prove that he had indorsed it to the plaintiff before it became due, in payment for goods sold, and Lord Ellenborough admitted him, saying that

he had an equal interest either way; for though if this action failed he would be liable to the plaintiff for goods sold, yet if it succeeded, he would be liable to the defendant for money paid. *Shuttleworth v. Stephens*, 1 *Campb.* 408. So in an action by the indorsee against the drawer of a bill, an intermediate indorser was called to prove that the defendant had promised to pay the bill (there being no direct evidence of notice;) he was objected to on the ground of interest, as if the plaintiff succeeded the bill would be extinguished, but if he failed he might still sue the first indorser; but Lord Ellenborough said, that the objection would exclude the party to a bill in every case where he comes to assist the plaintiff, and his Lordship did not think that the witness had such a direct interest in the suit, as to render him incompetent. *Stevens v. Lynch*, 2 *Campb.* 332. And in an action by the second indorsee against the first indorser, the second indorser was held a competent witness to prove that he, on receiving notice of dishonor from the plaintiff, gave notice thereof to the defendant. *Anon.* 3 *Mar.* 1822. *Cor. Abbott C. J. Chitty*, 417. In an action by the indorsee against the maker of a note, the *defendant* was permitted by Lord Kenyon to call the indorser to prove that he had paid the note to the plaintiff. *Charrington v. Milner, Peake*, 6. *Cooper v. Davies*, 1 *Esp.* 463. So in an action by the indorsee against the acceptor of a bill bearing no stamp, it was held, that the defendant might call the payee to prove that the bill, though dated at Hamburgh, was in fact drawn in London. *Jordaine v. Lashbrooke*, 7 *T. R.* 601. *diss. Ashhurst J.*

In an action by the indorsee against the drawer of a bill, the indorser was called to prove that he had received money from the drawer to take it up, and that he had accordingly satisfied it. The court of King's Bench held the witness competent. *Per Lord Ellenborough*, "It appears to me, in a very simple and clear view of the case, that the witness stood indifferent. He must either be liable to the plaintiffs, as indorsers of the bill, or to Kershaw (the drawer) for the money received by him in order to discharge it. It is true that in the latter case, if these plaintiffs recover, he may also be liable to Kershaw for the costs of this action; but that argument was urged in *Ilderton v. Atkinson*, (7 *T. R.* 481.) without effect. This record, though evidence of the fact of such recovery, would not relieve Kershaw in such an action against Wilby (the witness) from the proof of his having paid the money to the latter, for the purpose of satisfying the bill. I know of no other than the case of *Buckland v. Tankard*, (5 *T. R.* 578. *post*,) which goes on the ground of more or less difficulty in the witness in establishing his interest against one or other of the parties. But all the other cases go on the broad ground of interest in the witness, and as he seems to have stood indifferent as to the sum in dispute between these parties, I think his testimony was properly

received." *Birt v. Kershaw*, 2 *East*, 458. The case of *Birt v. Kershaw* is, however, much shaken by that of *Jones v. Brooke*, 4 *Taunt.* 464. *ante*, *p.* 301. where the circumstance, that the witness would be liable to the payment of the costs of the action, which he was called to defeat, was held to render him incompetent. *See* 1 *Phill. Evid.* 58. 2 *Stark. Ev.* 300.

In an action by the indorsee against the acceptor of a bill, the latter called the indorser to prove that the bill belonged to him, and that he had delivered it to the plaintiff merely for the purpose of enabling him to get payment from the acceptor, and not with intent to convey any interest to him. The witness was released, but Lord Kenyon rejected him, saying, that he had an interest upon which the release could not operate. On a motion for a new trial, the court agreed in opinion with Lord Kenyon, who said, "The whole question turns on this, whether the witness's situation would or would not be bettered by the event of the verdict in this case. I am still of opinion that it would, for if the plaintiff should succeed, Gregson (the witness) would be put to much greater difficulties to get back the money, than if the plaintiff should be foiled by means of his testimony, and therefore on the ground of interest I think the witness was properly rejected." *Buckland v. Tankard*, 5 *T. R.* 578. 1 *Esp.* 85. *S. C.* This decision appears to have been disapproved of by Lord Ellenborough in *Birt v. Kershaw*, 2 *East*, 451. *supra*, and it has been observed, that it appears to be the only case which has been decided on such a ground; and that from the leading cases on this subject, which rest on the broad ground of interest, such a circumstance may now more properly be considered as having a strong influence on the witness, but not as forming any solid objection to his testimony. 1 *Phill. Evid.* 63. 6*th ed.*

Although an indorser is in general a witness for either party, yet if the bill or note was made for his accommodation, and he has become bankrupt, and obtained his certificate, his situation is altered. In an action by the indorsee against the maker of a note, the defence was, that it was an accommodation note, and had been indorsed to the plaintiff after it was due. To prove this, Howard, the payee and indorser, was called, but being examined on the *voire dire*, it appeared that since the date of the note he had become bankrupt, and obtained his certificate. *Bayley J.* held, that he was not a competent witness as he was no longer liable to the plaintiff, but would be liable to the defendant if he were obliged to pay the promissory note drawn for his accommodation. *Maundrell v. Kennett*, 1 *Campb.* 408. (*n.*) Independently of the bankruptcy, the witness in this case seems to have been incompetent, as in a case of a verdict against the defendant, he would have been liable to pay the costs.

Competency of witnesses—acceptor, drawee, or maker.] In an action against the drawer of a bill, the acceptor is a competent witness to prove that he had no effects in his hands, belonging to the defendant, so as to excuse the proof of notice; for though the plaintiff should recover, the witness is still liable to the defendant. *Staples v. Okines*, 1 *Esp.* 332. So, the drawee may be called to prove the same fact. *Legge v. Thorpe*, 2 *Campb.* 310. So, what was said by the drawee on the bill being presented when due, is evidence, on the ground that he is the agent of the defendant for payment of the bill; but what passed between the drawee and the holder after the bill has become due is not evidence. *Prideaux v. Collier*, 2 *Stark.* 57. In an action against the drawer of a bill, accepted by Hill & Co. a witness was called for the defendant, to prove a set off. It appearing that he was one of the acceptors, the was objected to as incompetent; but it was answered that he was competent, since, if he defeated the action, he would be liable to the plaintiff. *Dumpier J.* however, was of opinion, that the witness was incompetent, since he was interested in lessening the balance, being answerable to the defendant for what the plaintiff should recover. *Mainwaring v. Mytton*, 1 *Stark.* 84. Upon this case, it has been observed, that if the drawer is protected against the holder by a cross-demand he has against the holder; *quære*, is not such demand, when set off, equivalent to payment, and will not the drawer be entitled to call on the acceptor for the full amount of the bill, at much as if he had paid the full amount in money? *Bayley*, 424.

In an action by the indorsee against the payee of a note, the defendant called the maker to prove an alteration in the date, and Lord Mansfield admitted him, as, at all events, he was liable to pay the note. *Levi v. Essex, Mich.* 1775. 2 *Esp. Dig.* 211. *4th ed.* So, in an action by Venning, as indorsee of a note, against Shuttleworth as payee and indorser, the plaintiff called the drawer to prove notice to the defendant; he was objected to, but *per Lord Kenyon, Stat indifferenter*, and he was accordingly admitted. *Venning v. Shuttleworth*, 1796. *Bayley*, 422.

In an action against one of the makers of a promissory note, the other maker, who was not sued, was called to prove the handwriting of the defendant, and the court of K. B. held him competent, for if the plaintiffs recovered against the defendant, the witness would be liable to him for contribution; or if they failed, they might resort to the witness for the whole, and then the witness would be entitled to contribution from the defendant; so that, *quacunque viâ datâ*, the witness stood indifferent. *York v. Blott*, 5 *M. & S.* 71.

In an action against the drawer of a bill, the acceptor was called for the defendant to prove, that after being accepted by him, and indorsed by the defendant, the bill was put into his

(the acceptor's) hands, for the purpose of getting it discounted, that he took it for that purpose to the plaintiff, who, having got hold of it, refused either to discount or return it. It was objected, that the witness was incompetent on the ground of interest, and Lord Tenterden C. J. rejected him. The court of K. B. refused a rule for a new trial, moved for on the ground that the witness was improperly rejected. *Per Lord Tenterden*, "I am of opinion, that the testimony of Benzeville (the acceptor) was properly rejected. It appeared by the statement of the defendant's counsel, that Benzeville was answerable for the payment of this bill by himself, and there was an implied undertaking by him to indemnify Lowe (the drawer and defendant). He was therefore interested in the result of the action, inasmuch as the costs, if the plaintiff succeeded, would ultimately fall on himself." *Edmonds v. Lowe*, 8 *B. & C.* 409. (*Note* 56.)

CHAPTER XIII.

OF THE SUM RECOVERABLE.

Principal.
Interest.
When due.
For what period.
Expenses.
Re-exchange.
Damages.

The plaintiff in an action on a bill or note is entitled to recover the principal and interest, and expenses, and in some cases re-exchange and damages.

Principal.] In general the plaintiff is entitled to recover the whole of the principal money, even though as against some other party, he will not be entitled to retain the whole amount. Thus where a bill is given for a valuable consideration between the drawee and drawer, the indorsee, though he has not given his indorser the full amount of the bill, may yet recover the the whole, and be the holder of the surplus above the sum he has really paid, to the use of the indorser. *Wiffen v. Roberts*, 1 *Esp.* 261. *ante, p.* 105. Whether the indorsee of a bill, receiving part payment from the payee, may recover the whole amount against the drawer, does not appear to be well settled. The case of *Johnson v. Kennion*, as reported in 2 *Wils.* 262, is as follows; the action was brought by Johnson the indorsee against Kennion, the drawer of a bill for 1000*l.* payable to Benson, who indorsed to the plaintiff in order to get the bill discounted. The plaintiff delivered the bill to Baldwyn, who advanced the the whole money; Benson paid 232*l.* to the plaintiff, then Baldwyn redelivered the bill to the plaintiff, who repaid him the residue. There was a verdict for the whole 1000*l.*

Upon shewing cause why there should not be a new trial, the plaintiff having been paid part of the sum, *Lord Camden C. J.* said, "Consider the nature of these contracts; they are negotiable bills, passing through the hands of divers persons, and though there are many indorsements on the bill, yet there is but one security for one sum of money, and he who has the possession of the bill, may bring his action; where there are many indorsers, the indorsees have a right of action in succession, but there is but one right of action, under the bill against one person at one and the same time. The bill being in one indorsee's hand, the indorser pays a part, and the objection is, that this ought to be considered as a payment for the drawer, but I think *toto cælo* it is otherwise, because the indorser is no servant, nor is agent to the drawer. Suppose Benson had paid the whole 1000*l.* to Johnson, and Benson's name had not been struck out, and an action brought in Johnson's name against the drawer, will you say the action will not lie? Suppose after a recovery against Kennion he had run away, could Benson have had a right to come against Johnson before any satisfaction? The bill is a security for every indorsor as *cestuy que trust*; I think it is a plain case that Johnson has a right to recover the whole money, and when he receives it he will have received 232*l.* of Benson's money; defendant has no reason to complain." The authority of *Johnson v. Kennion* was recognised by the court of Common Pleas in *Walwyn v. St. Quintin*, 1 *B. & P.* 658. *Per Eyre, C. J.* "One indorser may pay the whole money due upon a bill to another indorser without satisfying the bill as between him and the acceptor and the drawer. It is every day's practice for a dishonored bill to be thrown back upon the first indorser, each indorser taking back from his immediate indorser what he had paid on account of the bill, and at the same time delivering up the bill to him, and the latter again throwing it back on his immediate indorser, till it at last arrives at the first indorser. They may arrange the matter among themselves, and any one indorser may sue the acceptor or drawer, instead of any of the preceding indorsers, striking out the names upon the bill below his own. According to the very perplexed report of the case of *Johnson v. Kennion*, *in* 2 *Wils.* 262., the first indorsee of a dishonored bill for 1000*l.* after receiving 232*l.* from the payee, who indorsed it to him, and getting back the bill from Baldwyn, to whom he had indorsed it for value, and to whom he returned the money, recovered the whole 1000*l.* against the drawer, and on a motion for a new trial, the verdict was confirmed, and very rightly. It was nothing to the drawer how the indorsers arranged the business among themselves. The point of notice supposed to be an ingredient in the case in Mr. Justice Buller's note did not arise. It was assumed that the drawer was liable. The question, as far as I can collect it,

was, whether the indorsee should recover the whole 1000*l.* against the drawer, having received 232*l.* upon the bill from the first indorser, which is exactly our case, and it was held that he should, that he might recover for the first indorser the 232*l.* which the latter had paid, and that the defendant could have no reason to complain, for he only paid what he ought to pay. If the acceptor had paid any thing on account of the bill, it had been otherwise; so much of the bill would then have been satisfied, and at furthest the residue only could be recovered against the drawer." (*See Note* 57.)

But in an action by the indorsee against the acceptor of a bill, where it appeared that the plaintiff had received part of the amount from the drawer, the court of Common Pleas held that he was only entitled to recover the residue from the acceptor. *Per Wilson J.* "I had no doubt on this question till the case of *Johnson v. Kennion* (*supra*) was cited; but that was done away with by what has fallen from my Lord. Indeed, that case is inaccurately reported, and I am much disposed to think, that the Chief Justice never said what he is there stated to have said. That also might have been the case of a promissory note, instead of a bill of exchange. But there my brother Gould says, that where the defendant had paid the amount of the bill, there was an end of the contract. So here, the drawer having paid part, and the acceptor the residue, the contract was at an end, the acceptor being the agent of the drawer. There, also, my brother Gould says, where the drawer of a bill has paid part, you may indorse it over for the residue. But that is for the protection of the indorsee. Here the plaintiff knew how much was due; no such special indorsement was necessary. The case then of *Johnson v. Kennion* does not influence the present; but even if it did, I shall think the justice of this cause much in favor of the defendant. The plaintiff has received all the money, and yet desires to be a trustee for the drawer, and receive again from the acceptor, that which the drawer has paid. Besides, though the presumption is, that the acceptor of a bill of exchange has effects of the drawer in his hands, at the time of the acceptance; yet, in fact, the effects are often sent after the acceptance." *Bacon v. Searles*, 1 *H. Bl.* 88. So, where in an action against the acceptor of a bill for 300*l.*, the plaintiff took a verdict for the whole sum, on which the defendant filed a bill against him in the exchequer, when he admitted in his answer that he had previously received 180*l.* from the drawer. On motion for a new trial, Lord Mansfield said, "The verdict is certainly taken for 180*l.* more than was due; there was no admission of the payment at the trial, which was very wrong, and has been the occasion of filing a bill in the exchequer; therefore there ought to be a deduction of the money received, and a propor-

tionable part of the interest, together with all the costs in the exchequer." *Pierson v. Dunlop, Coup.* 571.

Interest—when due.] Interest is due on all bills of exchange and promissory notes, payable at a day certain, or after demand, if payable on demand. *Per Cur. Blaney v. Hendricks,* 2 *W. Bl.* 761. *As to the proof of interest on the latter, see post, Chapter* XIV. It is due upon bills and notes, whether expressed to be payable in the instrument or not. Where the interest is expressly agreed to be paid, it forms part of the debt; but where it is not expressly agreed to be paid, although by the usage of trade, it is payable, yet it can only be claimed by way of damages, and the jury may allow such an amount of interest as they think fit, or may even allow nothing in case they are of opinion that the delay of payment has been occasioned by the default of the holder. *Cameron v. Smith,* 2 *B. & A.* 308, *post. Ex parte Williams,* 1 *Rose,* 401. *Ex parte Marlar,* 1 *Atk.* 150. *Ex parte Cocks,* 1 *Rose,* 318. *See post, Chapter* XIV. But where the holder himself has not been in default, there appears to be no case in which interest has been refused. *Laing v. Stone,* 1 *M. & M.* 229. (*n.*) In an action against the maker of a promissory note above thirty years overdue, the payee having resided abroad during that time; the jury only gave damages to the amount of the principal, and the court of King's Bench refused to disturb the verdict. *Per Bayley J.* "I am of opinion in this case, that the question of interest was entirely for the decision of the jury, and I think they have decided rightly. Interest upon a bill of exchange or promissory note is no part of the debt, and it has been decided in the case of bankruptcy, that interest on such securities cannot be added to the principal to make good the petitioning creditor's debt. It has been clearly decided, that the interest is the damage for the detention of the debt." Abbott C. J. added, that during the time the plaintiff was an alien enemy, it would have been illegal to pay him the debt, and that for that interval therefore damages could not legally have been given. *Du Belloix v. Lord Waterpark,* 1 *D. & R.* 16. *Bayley,* 281. *S. C. and see Laing v. Stone,* 1 *M. & M.* 229. (*n.*) So, where in an action against the executrix of the maker of two notes, it appeared that the defendant had tendered the money to the holder, but that the holder having mislaid the notes, the money was not paid, Lord Ellenborough said, "I think interest ought to stop from the offer to pay. Interest, properly speaking, is a compensation agreed to be paid for the use of money forborne by the lender at the borrower's request. It is more frequently recovered in the shape of damages for money improperly retained by the debtor, contrary to the request of the creditor. But in neither of these ways can interest continue to run after an offer to pay the principal upon a reasonable

condition, which the party to receive it refuses, or is not in a situation to fulfil." Verdict for principal and interest down to the tender. *Dent v. Dunn*, 3 *Campb.* 297. So where there is no person *in esse* entitled to receive the amount of the bill, interest is not payable for that period. Thus, where a bill of exchange was indorsed by an agent to his principal, the latter having died before the indorsement, which was unknown to the agent, it was held that the administrator, who sued the acceptor of the bill, was only entitled to recover interest from the time of the fresh demand by him. *Murray v. the East India Company*, 5 *B. & A.* 204.

Where goods have been sold to be paid for by a bill which has not been given, the vendor is entitled to interest from the time when the bill, if given, would have become due. *Middleton v. Gill*, 4 *Taunt.* 298. *Porter v. Palsgrave*, 2 *Campb.* 472. *Lowndes v. Collens*, 17 *Ves.* 27.

Interest—for what period payable.] Where a bill or note specifies that interest shall be paid, it is payable from the date; without such words, from the time when the bill or note becomes due. *Kennerley v. Nash*, 1 *Stark.* 452. *Orr v. Churchill*, 1 *H. Bl.* 227. *Doman v. Dibdin, Ry. & Moo.* 381. Upon a bill or note payable on demand, interest is given from the time of the demand proved. *Blaney v. Hendricks*, 2 *W. Bl.* 761, *ante*, *p.* 309. *Cotton v. Horsemanden*, *Pr. Reg.* 357. *Upton v. Lord Ferrers*, 5 *Ves.* 803. But where by the terms of a note, the maker undertook to pay legal interest on demand, Lord Ellenborough held that this must mean from the date of the note. *Hopper v. Richmond*, 1 *Stark.* 508.

As against the acceptor of a bill, or the maker of a note payable at a certain time after date, the interest begins to run without any previous demand, from the day of date, or from the day of the bill or note becoming due as already stated, *vide supra*; but with regard to the drawer of a bill it has been held that he is not liable to pay interest until he receives notice of dishonor. *Walker v. Barnes*, 5 *Taunt.* 240. 1 *Marsh.* 36. *S. C. ante*, *p.* 73. Upon this case a doubt has been expressed by a writer of high authority whether the non-payment by the drawee was not a breach of the drawer's contract, and whether the holder was not entitled to interest for not receiving on the day when the bill became payable, what the defendant undertook he should receive on that day. It may be observed, however, continues that learned person, in support of this decision, that the constant form in assumpsit against a drawer or indorser, makes him promise only for the amount of the money mentioned in the bill. It is silent as to interest. It is, however, silent also, as to expences. *Bayley*, 280.

With regard to the time up to which interest is to be computed, it is now settled that it is to be carried down to the

time when final judgment is signed. *Robinson v. Bland*, 2 *Burr.* 1077. 1088. *Bayley* 279.; *and see Jarold v. Rowe*, 8 *Price*, 582. Upon error in the exchequer chamber, where the judgment is for principal and interest on a bill of exchange or promissory note, the practice is for the officer of the court to sever that part of the judgment which was for interest from the principal, by reference to the instrument stated on the record, by which it became due, and to compute interest on the principal only. *Sutton v. Morgan*, 5 *Taunt.* 758. *Tidd's, Pr.* 1242. 8*th ed.* With regard to the allowance of interest in trover for bills of exchange, Lord Ellenborough ruled that the damages were to be calculated by the amount of the principal and interest due upon the bills at the time of the demand, and refusal to deliver them up. *Mercer v. Jones*, 3 *Campb.* 477. However, in other cases interest has been allowed in the exchequer chamber on the affirmance of a judgment in an action of trover for bills of exchange from the time of the first judgment; *Atkins v. Wheeler*, 3 *B. & P. N. R.* 205. *Watts v. Toussaint*, 5 *Taunt.* 758; though the practice is, in the exchequer chamber, to give interest only in cases where interest is recoverable below. *Tidd's Pr.* 1241. 8*th ed.*

In some cases of foreign bills, damages are allowed by the custom of merchants, which may affect the calculation of interest, as in the following case. In an action against the drawer of a bill drawn at Barbadoes, at sixty days' sight, refused acceptance on 17th April, and refused payment on 19th June, the only question was from what period interest was to be calculated. Lord Ellenborough left this upon the custom of merchants, to the gentlemen of the special jury, who said the holder of the bill was entitled to ten per cent. as damages, and that interest was to be allowed only from the time when the bill was presented for payment, and the foreman observed he had known it so settled in a case before Mr. Justice Buller. *Gantt v. Mackensie*, 3 *Campb.* 51. But in a case of *Harrison v. Dickson*, tried the same sittings, which was an action against the indorser of a bill drawn upon England from N. S. Wales, the plaintiff did not claim any per centage upon the principal as damages, and was allowed interest from the time the bill was dishonored for non-acceptance. 3 *Campb.* 52. (*n.*) (*Note* 58.)

Expenses.] The only incidental expense in the case of the person who made the presentment, is the charge of the notice and protest; in the case of any antecedent party, that of the return of the bill or note must be added. *Bayley*, 282. These charges are, as it seems, recoverable either against the drawer, the acceptor, or the indorser. In many cases of the return of foreign bills, a certain sum per cent. is by custom allowed, which includes all incidental charges. *Auriol v. Thomas*, 2 *T. R.* 52. In an action against certain persons, who had

agreed to accept a bill of exchange for 500*l.* which they refused to accept, and which had been protested for non-acceptance and non-payment, a question arose as to the sum to be allowed as damages, upon the dishonor and protest of the bill. It appeared in evidence, that upon the dishonor of a bill drawn in Demerara upon England, and sent back dishonored and protested, 25 per cent. was considered to be the amount of the loss, and the plaintiff accordingly claimed damages at that rate upon the whole amount of the bill. It appeared, however, upon further examination, that the bill had not been sent back protested for the whole amount, and that the usual practice in such cases was (to which some of the special jury pledged their own knowledge,) to retain the dishonored bill in this country, and send a protest to Demerara, where upon the arrival of the protest, security was demanded and given by the drawers; and that the whole of the loss from the dishonor was not incurred, unless the bill in the result was not paid. It appearing that in the present instance the bill had been retained in this country until 400*l.* had been paid, and that ultimately it had been sent back protested and dishonored to the amount of 100*l.* only, no more than 25*l.* damages were allowed in that respect. *Laing v. Barclay*, 3 *Stark.* 41. The extraordinary expense of sending notice of dishonor by a special messenger, where necessary, may be recovered. *Pearson v. Crallan*, 2 *Smith*, 404. *ante*, *p.* 207. (*Note.* 59.)

Re-exchange.] The nature of re-exhange is thus described, *arguendo* in the case of *De Tastet v. Baring*, 11 *East*, 269. A merchant in London draws on his debtor in Lisbon, a bill in favor of another, for so much, in the currency of Portugal, for which he receives its corresponding value at the time in English currency; and that corresponding value fluctuates from time to time, according to the greater or lesser demand there may be in the London Market for bills on Lisbon, and the facility of obtaining them; the difference of that value, constitutes the rate of exchange on Lisbon. The like circumstances and considerations take place at Lisbon, and constitute in like manner the rate of exchange on London. When the holder therefore of a London bill drawn on Lisbon, is refused payment of it in Lisbon, the actual loss which he sustains is not the identical sum which he gave for the bill in London, but the amount of its contents if paid at Lisbon, where it is due, and the sum which it will cost him to replace that amount upon the spot, by a bill upon London, which he is entitled to draw upon the persons who are liable to him upon the former bill. That cost, whatever it may be, constitutes his actual loss, and the charge for re-exchange. And it is quite immaterial, whether he in fact re-draws such a bill in London, and raises the money upon it in the Lisbon market, his loss by the dishonor of the Lisbon bill is

exactly the same, and cannot depend on the circumstance, whether he repay himself immediately, by redrawing the amount of the former bill, with the addition of the charges upon it, including the amount of the re-exchange, if unfavorable to this country at the time, or whether he wait till a future settlement of accounts with the party, who is liable to him on the first bill here; but that party is at all events liable to him for the difference, for as soon as the bill was dishonored the holder was entitled to redraw."

The drawer of a bill is liable for re-exchange, although the payment of the bill is forbidden by the laws of the country where it is payable. Thus where the defendant in London drew a bill on Paris, and by a decree of the French Convention payment of such bills was prohibited, in consequence of which, it was sent back protested through Holland, it was held by the court of Common Pleas that the drawer was answerable for the re-exchange, occasioned by the circuitous mode of returning the bill through Holland. *Per Buller J.* "What is the engagement of the drawer of a bill of exchange? He undertakes that the bill shall be paid when due. If it be not paid it is not necessary for the holder to inquire for what reason it is not paid, and if the holder has been guilty of no default, the drawer is answerable for the amount of the bill, and if he is liable for the bill he must also be liable for the re-exchange, which is a consequence of the bill not being paid." *Mellish v. Simeon*, 2 *H. Bl.* 378. The defendant in Paris, gave to the plaintiff a promissory note, "payable in Paris, or at the choice of the bearer at the Union Bank, in Dover, or at his usual residence in London, according to the course of exchange upon Paris." After the note was given the direct course of exchange between London and Paris ceased altogether, having been previously to its total cessation very low. The note was at a subsequent period presented for payment at the residence of the defendant in London, at which time there was a circuitous course of exchange upon Paris by way of Hamburgh; the court of Common Pleas held that the plaintiff was entitled to recover upon the note, according to such circuitous course of exchange upon Paris, at the time when the note was presented. *Pollard v. Herries*, 3 *B. & P.* 335. Where a bill, payable in pagodas, has been returned protested from India, the constant course is said to be, to allow at the rate of 10*s.* per pagoda, which includes interest, exchange, and all other charges. *Auriol v. Thomas*, 2 *T. R.* 52. In an action against the indorsers of a bill payable at Lisbon, it appeared that when it became due, the French were in possession of Portugal, and that there was not in fact, at the time, any exchange existing between Portugal and England, but an instance or two were shewn of an exchange of bills about that time between the two countries, through the medium of other bills on Hamburgh and America. Lord El-

lenborough told the Jury, that if the plaintiffs had paid the re-exchange, or were, in the common course of dealing, liable to pay any, a verdict should be found for them, reserving the question of law, whether, in the relative situation of the two countries at that period, a charge for re-exchange could lawfully be demanded. (*As to which, see Mellish v. Simeon*, 2 *H. Bl.* 378, *ante*, *p.* 313.) The jury having found a verdict for the defendants, on a motion for a new trial, the court held that the question was properly put to the jury to allow the plaintiff damages or expenses in the name of re-exchange, if the plaintiffs were either liable to pay or had paid re-exchange on these bills; and that as it did not appear to have been clearly made out that there was at the time any course of re-exchange between Lisbon and London, the court must presume that the jury, which was one particularly conversant with subjects of this sort, found for the defendant on that ground, viz. that the plaintiff was not liable to pay re-exchange in this case, and not that the plaintiff had not actually paid it. *De Tastet v. Baring*, 11 *East*, 265. 2 *Campb.* 65. *S. C.* The plaintiff, a merchant in Pennsylvania, had orders from A. B. in London, to buy a cargo of corn, and to draw for the amount. He accordingly did so, and some of the bills were paid before the bankruptcy of A. B., others accepted and protested for nonpayment, others protested for non-acceptance and non-payment after the bankruptcy. By a law of 1700, made by the states of Pennsylvania, it was enacted that on all bills of exchange drawn or indorsed in Pennsylvania upon England, or any other part of Europe, which were returned protested, the drawer or indorser should pay to the holder of such bill 20 per cent. over and above the value of such bill in the specie or currency for which the bill was drawn, for the costs and damages of the protest and return of the bills. The plaintiff having discharged these bills, together with the 20 per cent. applied by petition to be admitted a creditor under the commission as well for the 20 per cent. which amounted to 6000*l.* and upwards, as for the value of the bills. Lord Camden, C. held the whole to be one transaction, and admitted the plaintiff to prove not only the amount of the bills, but the 20 per cent. paid after the bankruptcy, considering the 20 per cent. as liquidated damages. *Francis v. Rucker*, *Amb.* 672. Upon this decision Lord Thurlow C. observed, "Lord Camden went on the special act of the colony, that bills which should be returned should be paid with 20 per cent. beyond the amount of the original bills. The merchant had agreed to accept bills, and some bills were accepted before the bankruptcy, others were returned protested for want of acceptance. Lord Camden said, that the contract being that they should be accepted, carried with it the contract for the 20 per cent. if they were not so." *Ex parte Moore*, 2 *Br. C. C.* 599.

With regard to the parties liable to the payment of re-exchange, both the drawer and indorsers are liable. When a bill has passed through the hands of various indorsers in different places, it is usually returned back to the drawer through the indorsers. Each indorser is in these circumstances liable in re-exchange, according to the course of exchange between his residence and the place of payment only. *Forbes*, 200. *Glen*, 271. *Poth. pl.* 64. 67. The acceptor of a bill is not in general liable to pay re-exchange, for his contract only is to pay the principal sum at the place of payment, according to the value of money there, and he has nothing to do with the value of money at the place of drawing, which as to the drawer constitutes the re-exchange. Thus, in an action against the acceptor of a bill, drawn at Quebec, and accepted in England, the plaintiff tendered evidence of the amount of the re-exchange, and insisted on his right to recover it; but Lord Ellenborough said, "You may as well state, that by reason of the bill not being paid, the plaintiff was obliged to raise money by mortgage. You must proceed for re-exchange against the drawer. He undertakes that the bill shall be paid, or that he will indemnify the holder against the consequences. The acceptor's contract cannot be carried further than to pay the sum specified in the bill, and interest according to the legal rate of interest when it is due." *Woolsey v. De Crawford*, 2 *Campb.* 445. So where it was moved, that it be referred to the master to tax principal, interest, and costs on a bill of exchange, drawn in Scotland, and accepted by the defendants in England, and it was prayed that the master should be directed to allow re-exchange, the court were clearly of opinion that this could not be allowed against an acceptor here, who by his acceptance only charges himself with a liability to pay, according to the law of this country; and, if he do not pay, the holder has his remedy over against the drawer. The court would not, they said, refer it to the master to try foreign customs and facts, but only to compute what was due upon the bill itself. They therefore granted the motion in the common form. *Napier v. Sneider*, 12 *East*, 420. It has not, however, been yet determined, that the acceptor of a bill, accepted in one place and payable in another, is not liable for the re-exchange. (*Note* 60.)

Damages.] Although any extraordinary loss, not necessarily incidental, which the holder or other party may be put to by travelling, the loss of another contract, &c. cannot be recovered; *Lovelass*, 235. *Lex Merc.* 461. (*See Note* 59.); yet in some cases of foreign bills, by the custom of merchants, a certain per centage is allowed in the name of damages, which sometimes includes exchange or interest, for a certain period, and this sum varies according to the custom of the place at which the bill is drawn. *See Auriol v. Thomas*, 2 *T. R.* 52;

Laing v. Barclay, 3 *Stark.* 41. *Gantt v. Mackenzie*, 3 *Campb.* 51. By one writer it is said, that re-exchange and damages on a dishonored bill from Jamaica, are 8 per cent., besides all expenses. On a bill from the Leeward Islands, 10 per cent.; and from Demerara and Berbice, 25 per cent. *Glen on Bills*, 269. (*n.*) 2*d Edit.*

CHAPTER XIV.

OF BANKRUPTCY.

Trading—trafficking in bills.
Act of bankruptcy—denial to holder of bill.
Petitioning creditor's debt on bills.
Amount of.
Nature and time of accruing of.
Proof of bills and notes.
What bills and notes may be proved.
Time of holder's becoming party to.
Accommodation bills.
In general.
Proof by the party accommodating against the estate of the party accommodated.
Cross bills.
In general.
Where there are cross bills, and a cash account, and both parties become bankrupts.
Under several commissions, and amount of proof.
Where the bills have been deposited as a security.
Where there are several bills, and one is paid in full—proof reduced.
Interest.
Expenses and re-exchange.
Election.
Set-off.
Bills and notes of which the bankrupt is the reputed owner.

Trading—by trafficking on bills.] A person drawing and redrawing bills of exchange for profit, has been held to be a

trader within the meaning of the bankrupt laws (21 Jac. 1. c. 19., now 6 G. 4. c. 16. s. 2.) One Wilson, an army agent in London, drew on Johnson, another agent in Dublin, to the amount of 280,000*l.*, and Johnson drew on Wilson to the amount of 290,000*l.*; but there was no commission money on either side. It was proved by various merchants, that drawing and redrawing bills to such an amount, and a continuation of it was a trafficking in exchange; and such a trafficking as would make a man liable to a commission of bankruptcy. The jury asked the judge, whether such a drawing and redrawing was in point of law a trading. The judge said it was not so much a point of law as of fact, to be determined by them on the usage of merchants; and if they paid credit to that evidence, this was a trading. The jury found, that Wilson was a trader, and the verdict was acquiesced in. *Richardson v. Bradshaw*, 1 *Atk.* 128. (*See also Inglis v. Grant*, 5 *T. R.* 530.) Upon this case Lord Mansfield observed, that a very material circumstance was, that Wilson kept other people's money; *Hankey v. Jones*, *Cowp.* 747; and it is said by Lord Eldon, that Lord Mansfield would not have held that drawing and redrawing bills would alone make a man liable to the bankrupt laws, independent of the circumstance in *Richardson v. Bradshaw*, that Wilson held other men's money and made profit by it. *Ex parte Bell*, 15 Ves. 356. But a person who draws bills on his own account, and for his own convenience, and not to make a profit thereby, is not a trader. Thus, where a clergyman engaged in draining lands, drew bills to a large amount, for the payment of which he provided by remitting cash to the acceptors, allowing his bankers a quarter per cent. for paying them, and in some instances paying a quarter per cent. for getting them discounted, and in other cases borrowing accommodation bills to a large amount; he was held not to be a trader. Lord Mansfield distinguished this case from the above cited case of *Richardson v. Bradshaw*, for there Wilson had large sums of other people's money in his hands, and made a profit by the drawing and redrawing of himself and Johnson; but here the bills were drawn by a person, merely for the purpose of improving his own estate, and he paid discount on what he drew. *Hankey v. Jones*, *Cowp.* 745. Merely discounting bills of exchange will not constitute a person a scrivener within the bankrupt laws. Thus, where a clerk in the Custom House frequently took debentures for merchants, and received the money for them, which he kept in his possession, taking a commission on the receipt; and, with the money so received, discounting bills and notes for his own benefit, Lord Kenyon held, that this did not constitute him a scrivener. *Hamson v. Harrison*, 2 *Esp.* 555.

A banker is liable to be made a bankrupt. 6 G. 4. c. 16. s. 2. A person acting as a banker, though not keeping an open shop,

is subject to the bankrupt laws. *Ex parte Wilson*, 1 *Atk.* 217. An agent to a regiment is not a banker. *Id.*

Act of bankruptcy—denial to holder of bill.] Where a trader denied himself to the holder of a bill, at nine o'clock on the morning of the day on which it became payable, but in the course of the same day procured money, and paid the bill before five o'clock; it was held, that the act of bankruptcy was complete by the denial in the morning, and that it was not purged by the subsequent payment. *Colkett v. Freeman*, 2 *T. R.* 59. If a trader denies himself to a person, who desires that he may be told that a certain bill of exchange, mentioning the parties to it, is dishonored, and that he wishes to see him in consequence, such denial is an act of bankruptcy without further proof of the party's being a creditor, if the jury believe that the bankrupt so considered him. *Bleasby v. Crossley*, 2 *C. & P.* 213.

Petitioning creditor's debt on bills—amount of.] No commission shall be issued, unless the single debt of such creditor, or of two or more persons, being partners, petitioning for the same, shall amount to 100*l.* or upwards, or unless the debt of two creditors so petitioning, shall amount to 150*l.* or upwards, or unless the debt of three or more creditors so petitioning, shall amount to 200*l.* or upwards, and every person who has given credit to any trader, upon valuable consideration, for any sum payable at a certain time, which time shall not have arrived when such trader committed an act of bankruptcy, may so petition or join in petitioning as aforesaid; whether he shall have any security in writing, or otherwise, for such sum or not. 6 *G* 4. *c.* 16. *s.* 15. Where a bill does not carry interest expressly on the face of it, and is for a less amount than 100*l.*, interest cannot be added to the sum payable, so as to make up a good petitioning creditor's debt; for interest is in this case considered in the light of damages. *Cameron v. Smith*, 2 *B. & A.* 305. *In the matter of Burgess, Buck*, 412. 8 *Taunt.* 660. 2 *B. Moore*, 745. *S. C.* Where two bills of exchange for 50*l.* were drawn, and issued by a trader before an act of bankruptcy, and did not become due until after such act, but before the petition, it was held that this constituted a good petitioning creditor's debt, though at the time of the act of bankruptcy there was only 100*l.* due, *minus* the discount. *Brett v. Levett*, 13 *East*, 213. A debt, amounting to 100*l.*, consisting of the notes of the bankrupt indorsed to the petitioner, and bought by him at 10*s.* in the pound, is sufficient to support a commission. *Ex parte Lee*, 1 *P. Wms.* 782.

Petitioning creditor's debt, nature and time of accruing of.] The holder of a bill of exchange, accepted by a trader, before

an act of bankruptcy by him committed, may petition for a commission, although at the time of petitioning the bill is not due, for it is *debitum in præsenti, solvendum in futuro,* and by 6 Geo. 4. c. 16. s. 15. a person who has given credit to any trader, upon valuable consideration, for any sum which shall not have become payable at the time such trader committed an act of bankruptcy, may be a petitioning creditor. So, also, the holder of a bill may petition for a commission against the drawer before the bill becomes due. Thus, where A. having drawn a bill of exchange for 148*l.* in favor of B. to whom he was previously indebted to that amount, committed an act of bankruptcy before either the bill was due, or had been presented for acceptance, the court of King's Bench, on a case sent by the Lord Chancellor for their opinion, certified that there was a good petitioning creditor's debt to support the commission. *Ex parte Douthat,* 4 *B. & A.* 67. But, when the bill has arrived at maturity, it is necessary in order to constitute a good petitioning creditor's debt against the drawer, to prove that the bill was dishonored by the acceptor, and that the drawer had notice of the dishonor; *Cooper v. Machin,* 1 *Bingh.* 426. 8 *B. Moore,* 539. *S. C.*; unless in the case of an accommodation bill, when it is unnecessary to prove notice of dishonor to the drawer. *Bickerdike v. Bollman,* 1 *T. R.* 435. *ante, p.* 222. Under the former statutes relating to bankrupts, it has been held, that where two persons exchange acceptances, and before the bills are at maturity, one of them commits an act of bankruptcy, the other has not a sufficient debt to support a commission. *Sarrat v. Austin,* 4 *Taunt.* 200. 2 *Rose,* 112. *S. C.* (*See Note* 61.) A promissory note, though on the face of it purporting to be a present debt, yet being in substance a security for a contingent debt, and upon which, if attempted to be enforced at law, the court of Chancery would have restrained the action, is not a debt sufficient to support a commission. *Ex parte Page,* 1 *Glyn & Jam.* 100. Where the petitioner had accepted a bill for the accommodation of the bankrupt, who drew it, and after an act of bankruptcy, paid the amount to the holder, it was held that the petitioning creditor was a mere surety for the bankrupt, and that when he paid the bill, and not till then, he became a creditor of the bankrupt, and that this payment being made by him after an act of bankruptcy, could not create a debt to support a commission. *Ex parte Holding,* 1 *Glyn & Jam.* 97. A bill of exchange, which cannot be sued on at law, will not support a commission. Thus, where the drawers of a bill sued out a commission against the acceptor, but it appeared that one of the drawers had given an undertaking to provide for the acceptance when it should become due, Lord Ellenborough was of opinion, that there was no good petitioning creditor's debt, for that if an action had been brought by the drawers on the bill, it would have been an answer that

one of the plaintiffs had promised to provide for it; a release given by one being binding on the rest. *Richmond v. Heapy*, 1 *Stark.* 202.

Although it was at one time doubtful, whether in case of bills or notes indorsed to the petitioner, after the bankruptcy, the indorsee would be entitled to a commission, *Ex parte Lee*, 1 *P. Wms.* 783, yet it is decided that such a debt is sufficient. *Ex parte Thomas*, 1 *Atk.* 73. *Anon.* 2 *Wils.* 135. *Bingley v. Maddison*, 1 *Co. B. L.* 13. 1*st ed.* 22. 2*d. ed.* Thus, where the petitioning creditor's debt did not amount to 100*l.* at the time of the act of bankruptcy, but was increased to more than that sum by a promissory note of the bankrupt due at that time, and indorsed to the petitioner before he petitioned for the commission, the court of King's Bench held that there was a sufficient debt to support the commission, Lord Kenyon observing, that it had been several times decided, that it was not necessary the debt should exist in the *petitioning creditor* at the time of *the act of bankruptcy*. *Glaister v. Hewer*, 7 *T.R.* 498. But it must appear that there was a good petitioning creditor's debt in the petitioner at the time of *the petition*, and therefore it must be shewn that the bill or note was indorsed to the petitioner before he petitioned. *Rose v. Rowcroft*, 4 *Campb.* 245. *see ante*, *p.* 25. So, it must appear, that the debt upon which the commission is founded was *in existence* at the time of the *act of bankruptcy*, though, as already stated, it is not necessary to shew it existing in the petitioner at that time. *Moss v. Smith*, 1 *Campb.* 489.

Where a trader is indebted in more than the amount of 100*l.* and draws a bill for part of the amount, reducing the debt below 100*l.* which bill is accepted by the drawee for the accommodation of the drawer, and is given to the creditor, who, on its being dishonored neglects to give notice to the drawer, the creditor has still such a debt as will support a commission. *Bickerdike v. Bollman*, 1 *T. R.* 405. *ante*, *p.* 222. Where there is a good petitioning creditor's debt, and a promissory note is given for the amount on a wrong stamp, the previous debt still remains, and is sufficient to support a commission. *Ex parte Geddes*, 1 *G. & J.* 419. *ante*, *p.* 33.

When a promissory note is given to the wife, *dum sola*, the husband alone may petition for a commission. *Ex parte Barber*, 1 *G. & J.* 1. *M'Neilage v. Holloway*, 1 *B. & A.* 218. *ante*, *p.* 58.

Proof of bills and notes—what bills may be proved.] By stat. 6 Geo. 4. c. 16. s. 51. any person who shall have given credit to the bankrupt upon valuable consideration, for any money, or other matter or thing whatsoever, which shall not have become payable when such bankrupt committed an act of bankruptcy, and whether such credit shall have been given

upon any bill, bond, note, or other negotiable security or not, shall be entitled to prove such debt, bill, note or other security, as if the same was payable presently, and receive dividends equally with the other creditors, deducting only thereout a rebate of interest for what he shall so receive, at the rate of five *per cent.* to be computed from the declaration of a dividend to the time such debt would have become payable, according to the terms upon which it was contracted.

In general, such bills and notes only are proveable as could have been enforced at law or in equity. *See Ex parte Dewdney*, 15 *Ves.* 495. Therefore where the consideration of a bill is illegal (*see ante, Chapter* V.) it cannot be proved, provided the transaction be such as to avoid it in the hands of the person who seeks to prove it. Where a stockbroker having a large sum of money in his hands to be employed in stock-jobbing transactions, contrary to stat. 7 Geo. 2. c. 8., diverted part of that money to his own use, and gave promissory notes for the balance remaining in his hands, and became bankrupt, the chancellor would not permit the notes to be proved, so far as they were given for the fruit of the illegal use of the money lodged with the bankrupt, but permitted them to be proved to the extent of the money put into his hands and diverted to his own use. *Ex parte Bulmer*, 13 *Ves.* 313. So where a bill was indorsed to a broker in consideration of money paid by him in effecting insurances, one of which was illegal; the acceptor becoming bankrupt, the petition of the broker to prove was dismissed as to the part which arose on the illegal insurance, and an inquiry was directed as to the rest, the chancellor observing, "the equity is, that where the consideration consists of two parts, one bad, the other good, the bill shall stand as to what is good." *Ex parte Mather*, 3 *Ves.* 373. *See ante, p.* 116.

With regard to bills or notes payable on demand, it has been held that they are proveable, though no demand has been made before the act of bankruptcy. *Ex parte Beaufoy*, Co. B. L. 159, *ante, p.* 269. Where a note was given in this form, "On having twelve months' notice, we jointly and severally promise, &c. to pay, &c. 200*l.* for value received, with lawful interest," the court of King's Bench held it proveable against the estate of one of the makers, who became bankrupt before any notice was given. *Per Abbott, C. J.* "We have decided on more than one occasion, that the expression 'value received,' in a note, imports 'received from the payee.' The note in question may therefore be read thus, 'We acknowledge to owe the payee 200*l.*, and promise to pay him that sum with interest twelve months' after notice.' If so, there is not any contingency as to the debt, for that is admitted to be due. Nor is the time of payment contingent in the strict sense of the expression, for that means a time which may or may not arrive; this note was made payable at a time which we must suppose would arrive. But no notice was given, and therefore no action could be

maintainable at law at the time of the bankruptcy. The stat. 7 Geo. 1. c. 31. was made to remedy such evils, and provides for the proof of debts payable *in futuro*, and provides also for a rebate of interest. Can then such rebate be made here? I think it may. The interest will cease, and then the effect will be the same as if the note had been payable at a certain period after date." *Clayton v. Gosling*, 5 *B. & C.* 360. 8 *D. & R.* 110. *S. C.* So where the bankrupt had given the following note, "I promise to pay M. E. or order, after three months' notice, the sum of 160*l.*, together with interest due thereon for value received," and two years interest had been paid prior to the commission, but no notice had been given; on a petition by the payee to be admitted to prove, the Lord Chancellor said he had conversed with the judges upon it, and in concurrence with them, he thought that the payment of interest was a material circumstance in the case, and was to be considered as evidencing that the parties had dealt with the note as an immediate debt, and that upon the particular circumstances, therefore, the petitioner should be admitted to prove his debt and interest up to the commission. *Ex parte Elgar*, 2 *Glyn & Jam.* 1. But where in a note payable with interest, there was this clause, "It is agreed that six months' notice be given before payment is required," and interest was paid, after which the maker became bankrupt; on a petition to be admitted to prove the debt, the Vice Chancellor held that as no action would lie for this debt at the time of the bankruptcy, and as this case was not provided for by any statutory enactment, the petitioner could not be admitted to prove. *Ex parte Downman*, 2 *G. & J.* 85. However, on appeal, the order of the Vice Chancellor was reversed on the authority of *Ex parte Elgar*, and *Clayton v. Gosling*. 2 *G. & J.* 241.

So bills or notes, which on account of some defect in their form, or for want of a stamp, *Ex parte Manners*, 1 *Rose* 68, cannot be made available at law, are not proveable. Thus a note, whereby the maker promised to pay at such period as his circumstances would admit, without detriment to himself or family, cannot be proved, for on account of the contingency it is no promissory note. *Ex parte Tootell*, 4 *Ves.* 372. *and see ante, p.* 12. *to p.* 17. So promissory notes, payable in cash or in Bank of England notes, are not promissory notes within the statute of Anne, and the holder who has received them from an immediate person, is not entitled to prove them against the estate of the maker. *Ex parte Imeson*, 2 *Rose*, 225. *Ex parte Davison, Buck*, 31.

Nor can there be any proof upon a bill or note, if the bankrupt has not upon the face of it become a party to it; unless in the case of a parol acceptance; *Ex parte Dyer*, 6 *Ves.* 9., now by *Stat.* 1 & 2 *G.* 4. *c.* 78. *ante, p.* 173. confined to foreign bills. Thus on a petition to expunge the proof of a debt on a

bill, which the bankrupts had procured to be discounted, but which they had not indorsed, the Lord Chancellor said, that the man who discounts the bill is a purchaser of it, and that no contract arises between him and the person from whom he takes it, collateral to the bill. If the discounter indorse it, then the holder may of course call upon him as indorser, or prove the debt under his commission, if a bankrupt, and under the statute 7 Geo. 1. may prove the bill with a rebate; but if there be no indorsement by the party, the discounter must do what he can with the bill, but has no remedy against the party who brought it to him. His Lordship therefore directed the proof to be expunged. *Ex parte Roberts*, 2 *Cox*, 171, *ante*, *p.* 42. So though the party who gets the bill discounted, gives a written engagement, not on the bill, to warrant the payment of it, but does not indorse it, the bill cannot be proved on his estate. *Ex parte Harrison*, 2 *Cox*, 172. 2 *Bro. C C.* 614. *S. C. In re Barrington*, 2 *Scho. & Lef.* 112. *Ex parte Hustler*, 1 *Glyn & Jam.* 9. Upon the same principle, a person who passes a bill without indorsement, but who takes it up after the acceptor has become bankrupt, will not be allowed to prove it against the estate of the acceptor. *Ex parte Isbester*, 1 *Rose*, 20. Though the holder of a bill, who has discounted it, cannot prove on the bill itself, if he has taken it without indorsement, yet if he has taken an agreement to pay it, he may in some cases prove upon the agreement. On a petition to expunge the proof of a debt for money lent, it appeared that the creditor had discounted a bill, which the bankrupt did not indorse, but agreed to pay as if he were indorser. *Per Lord Eldon, C.* "The proof must be expunged. If the creditor can prove, it cannot be upon the bill, it must be upon the agreement, and this will depend upon the fact, whether the agreement was broken before or after the bankruptcy. Expunge the proof, without prejudice to the creditors applying to prove upon the agreement." *Ex parte Bell*, 19*th April*, 1820, 1 *Mont. B. L.* 194. (*n.*) 3*rd Ed.*

But where a bill is given for an antecedent or concurrent debt, without indorsement, and is not taken *as payment*, and is dishonored, the original debt as already stated, *ante*, *p.* 95. *to p.* 99. is not extinguished, and although the party taking the bill, cannot make any claim on the estate of the party from whom he took it, on the bill itself, yet he may prove for the amount of the debt for which it was given. *Ex parte Blackburn*, 10 *Ves.* 206. *Ex parte Rathbone*, *Buck*, 215.

Where a bill is payable to a fictitious payee, the holder for a valuable consideration may prove upon the estate of the indorser; *Ex parte Clark*, 3 *Bro. C C.* 238; or of the prior parties privy to the fictitious transaction. *See ante*, *p.* 24, 19 *Ves.* 311.

Where a bill has been lost by the holder, he may be permitted to prove it on giving an indemnity to the satisfaction of the commissioners. *Ex parte Greenway*, 6 *Ves.* 812.

In general the circumstances which at law operate to discharge the liability of the different parties to bills, will prevent the bills from being proved. *See ante, Chap.* IV. Thus where the holder of a bill gives time to the acceptor, or receives a composition from him without the consent of the assignees, the estate of the drawer who has become bankrupt will be discharged, and the holder cannot prove. *Ex parte Smith*, 3 *Bro. C C.* 1. *Ex parte Wilson*, 11 *Ves.* 410. *ante, p.* 74. *Ex parte Gifford*, 6 *Ves.* 807. So the holder of a bill will be prevented from proving it by laches, in not giving due notice of dishonor. *ante, Chap.* IX. *Ex parte Heath*, 2 *Ves. & B.* 240. In one case, Lord Eldon C. held, that the notice to be available must come from the holder of the bill; *Ex parte Barclay*, 7 *Ves.* 597; but that doctrine has since been overruled. *Ante, p.* 97. Where the claim upon a bill or note is barred by the statute of limitations, it cannot be proved. *Ex parte Dewdney*, 15 *Ves.* 479. *Ex parte Roffey*, 19 *Ves.* 468. 2 *Rose*, 245. *S. C.*

Proof of bills — time of holders becoming party to.] Where a man draws, indorses or accepts a bill, it is a present debt, though payable *in futuro*, and where he afterwards becomes bankrupt, any person taking the bill for a valuable consideration after the bankruptcy, will stand in the place of the holder at the time of the bankruptcy, and may prove against the estate of the party becoming bankrupt, to the same amount as the holder of the bill at the time of the bankruptcy could have proved. *Ex parte Deey*, 2 *Cox*, 423. *Ex parte Brymer, Co. B. L.* 165. *Ex parte Thomas*, 1 *Atk.* 73. *Glaister v. Hewer*, 7 *T. R.* 498. Thus where the petitioner's testator had bought up the notes of the Salisbury bank, after their bankruptcy, on a petition to prove these notes, there being no evidence from whom the testator bought the notes, or that they were the subject of proof in the hands of the former holders, the Vice Chancellor said, "I cannot make an order according to the prayer of the petition. There can be no proof in respect of these notes, unless it be established that at the time of the bankruptcy they were in the hands of holders, who were entitled to prove them under the commission. The only order I can make will be to allow the petitioner to go again before the commissioners for the purpose of shewing that the testator purchased the notes from *bonâ fide* holders entitled to a proof in respect of the notes they individually held." The case of the Portsmouth bank was mentioned, where the sailors of several ships had received their wages and prize money in the notes of that bank, and the Admiralty, to prevent discontent in the Fleet, had taken up the notes from the sailors, and afterwards applied to prove the amount against the estate of the bank; upon which occasion, the Lord Chancellor made the order, with a direction that the Admiralty should not interfere in the choice of assignees. *Ex parte Rogers, Buck*, 490. So

where one of several partners, who had become bankrupt, after the bankruptcy and after procuring his certificate, took up many of the outstanding notes of the joint concern, the Vice Chancellor on petition permitted him to prove the notes on the joint estate upon his own affidavit, and in the confidence, as he was a partner, that he would not have paid the notes unless the holders had a valid claim upon them against the firm. *Ex parte Atkins, Buck*, 479. Upon the same principle, where the acceptor of a bill, which had been indorsed, became bankrupt, and after the bankruptcy, the indorser was compelled to take it up, it was held that he might prove the amount against the estate of the acceptor. *Joseph v. Orme*, 1 *B. & P. N. R.* 180. *Mead v. Braham*, 3 *M. & S.* 91. *Ex parte Brymer, Co. B. L.* 165. *Cowley v. Dunlop*, 7 *T. R.* 570. *Ex parte Seddon, cited Ib.* Though where, on the acceptor's becoming bankrupt, the indorser, who has indorsed the bill before the bankruptcy, and has taken it up, may prove, yet he cannnot set off a debt due from him to the estate. *Ex parte Hale*, 3 *Ves.* 304. Where the indorser of a bill lent his indorsement at the desire of the drawer, but without any privity with the acceptor, who had himself no consideration at the time for such acceptance, and the day before the bill became due the acceptor became bankrupt, and it was immediately afterwards taken up by the indorser out of the hands of the indorsee, it was held that the bill was proveable by the indorser as a debt under the acceptor's commission. *Houle v. Baxter*, 3 *East*, 177. But where the indorser paying the bill after the bankruptcy, indorses it merely for the accommodation *of the bankrupt*, it has been held that he is not entitled to prove, for he never had any claim against the bankrupt upon the bill before his bankruptcy, and the only cause of action arises by the payment of the bill after the bankruptcy. In an action by the payee against the drawer of a bill, it appeared that the defendant drew the bill in favor of the plaintiff, merely for the purpose of raising money, and that the plaintiff indorsed and discounted it, paying over the proceeds to the defendant; the defendant becoming bankrupt, the plaintiff was compelled to take up the bill and sued the defendant, who pleaded his bankruptcy. The court of Common Pleas held that the debt was not barred by the certificate, and that the plaintiff was entitled to recover. *Brooks v. Rogers*, 1 *H. Bl.* 640. It seems that the case of *Howis v. Wiggins*, 4 *T. R.* 714, was decided on the same principle. *See Cowley v. Dunlop*, 7 *T. R.* 577. *Eden's B. L.* 143. 2*d ed.*

A person who accepts a bill for the honor of the drawer, which bill has been previously accepted and dishonored, is entitled to stand in the place of the drawer, and on payment of the bill after the bankruptcy of the first acceptor, may prove the amount against his estate; *Ex parte Wackerbarth*, 5 *Ves.* 573; but if the drawer could not have recovered against the first ac-

ceptor, as when he had no effects in his hands, the acceptor *supra protest* cannot prove the bill against the estate of the first acceptor, for he cannot make a title stronger than that of the drawer, and oust the assignees of the bankrupt of the defence which they would have had against him. *Ex parte Lambert*, 13 *Ves.* 179.

Proof of bills — accommodation bills in general.] In general the holder of a bill cannot prove it against the estate of any person, who for his accommodation has put his name upon it; *see ante, Chapter* V.; and although at law notice that the bill is an accommodation bill, will not prevent the party who takes it for a valuable consideration, from suing the person who has put his name upon it by way of accommodation, *see ante, p.* 111, yet in equity it has been considered that such a person does not take the bill *bonâ fide*, where he knows that the accommodating party has stopped payment. Thus, where the bankrupts for the accommodation of Collier, the acceptor, drew a bill and stopped payment, and Collier discounted the bill with Blyth, who knew that the drawers had stopped payment, but discounted the bill with the intention of setting off against part of it a debt due from himself to the drawers; on a petition to expunge the proof of the balance, Leach, V. C. said, "The question is whether Blyth was the holder of this bill *bonâ fide*. At the time he received the bill, he must be taken to have known that Collier could have no demand upon it against the bankrupts: *primâ facie* the acceptor is to pay, and Blyth does not pretend that Collier represented to him that as between him, Collier, and the bankrupts, they were bound to pay the bill. As matters stood, there would have been no demand against the bankrupt's estate upon the bill, and Blyth would have had to pay to the bankrupt's estate the sum of 136*l.* 18*s.* 4*d.* If Blyth, therefore, really paid the consideration of the bill to Collier, without any secret understanding between them, his purpose was to enable Collier to spend the money which he knew belonged to the bankrupt's estate, and to convert the bankrupt's estate into a debtor for 100*l.* in the place of being a creditor for 136*l.* Under these circumstances, he cannot be considered the holder of the bill *bonâ fide*, and the debt must be expunged." *Ex parte Stone*, 1 *Glyn & Jam.* 191. Watkin had dealings with Garway, whose correspondent, Hatton, the bankrupt was, and it was agreed between Garway and Hatton that the latter should answer all drafts that Watkin should draw upon him on account of Garway. Watkin drew accordingly on Hatton for 4000*l.*, who accepted it, though he had no effects of Garway's in his hands at the time; the payee, on the acceptor's non-payment, applied to Watkin, who paid it, and who was admitted to prove under the commission against Hatton. Hatton's assignees petitioned against this admission. *Per*

Lord Hardwicke, C. "I will consider it first as it stands between Watkin and Hatton. If the payee receive the money comprised in the draft of Watkin, he may bring an action against Hatton in the name of the payee, who will be considered as a trustee for the drawer, or he may bring an action in his own name against Hatton, if he had effects of Watkin at the time of the acceptance sufficient to answer the draft; but if he had not effects, but only honored the draft, such action cannot be maintained, or if in this case Hatton had paid it, instead of being a debtor to Watkin, he would have been indebted to Hatton *pro tanto*, and so it was determined in the House of Lords, on a writ of error from the court of King's Bench. But, consider it now as it stands, between Garway, Watkin and Hatton; Watkin appears at the time he drew on Hatton to have had effects in Garway's hands of more value than the amount of this draft, and as there was such an agreement as I have before mentioned, between Garway and Hatton, the latter is to all intents and purposes just in the same situation as Garway himself, and, therefore, though he had no effects in his hands at the time, has, by his agreement, made himself liable. The same rule will hold, therefore, under a commission of bankruptcy, as in an action at law, and under these circumstances Watkin has a right to come in as a creditor, under the commission, against Hatton." *Ex parte Marshall*, 1 *Atk.* 131. *and see Ex parte Matthews*, 6 *Ves.* 285.

Proof on accommodation bills, by the party accommodating, against the estate of the party accommodated.] Before the stat. 49 Geo. 3. c. 121. s. 8. where one person, for the accommodation of another, put his name upon a bill or note, and the party thus accommodated became bankrupt, and afterwards the party accommodating was compelled to pay the amount of the bill or note, he could not prove it under the estate of the person for whose accommodation he paid it, for no debt accrues until payment of the bill or note. *Young v. Hockley*, 2 *W. Bl.* 839. 3 *Wils.* 346. *S. C. Ex parte Walton*, 1*A tk.* 122. *Brooks v. Rogers*, 1 *H. Bl.* 640. *ante, p.* 326. *and see Ex parte Holding*, 1 *G. & J.* 97. *ante, p.* 320. *Howis v. Wiggins*, 4 *T. R.* 714. To remedy this grievance, the 49 Geo. 3. c. 21. s. 8. was passed, which was re-enacted in substance by 6 Geo. 4. c. 16. s. 52. whereby any person, who at the issuing of the commission shall be surety, or *liable* for any debt of the bankrupt, or bail for the bankrupt, either to the sheriff or to the action, if he shall have paid the debt, or any part thereof in discharge of the whole debt, (although he may have paid the same after the commission issued) if the creditor shall have proved his debt under the commission, shall be entitled to stand in the place of such creditor, as to the dividends, and all other rights under the said commission, which such creditor

possessed, or would be entitled to, in respect of such proof; or if the creditor shall not have proved under the commission, such surety, or person liable, or bail, shall be entitled to prove his demand, in respect of such payment, as a debt under the commission, not disturbing the former dividends, and may receive dividends with the other creditors, although he may have become surety, liable, or bail as aforesaid, after an act of bankruptcy committed by such bankrupt, provided that such person had not, when he became such surety or bail, or so liable as aforesaid, notice of any act of bankruptcy by such bankrupt committed. Although, in strictness, an accommodation acceptor is not a *surety*, yet he is a person *liable* within the words of this act. *Per Lord Eldon, Ex parte Yonge*, 3 *V. & B.* 40. *Ex parte Lloyd*, 1 *Rose*, 9. Where the accommodation acceptor assigns his debt, his assignee may call upon him to prove it for his benefit. *Ex parte Lloyd*, 1 *Rose*, 4. When the accommodation acceptor has sustained special damage, an action for such damage is barred by the certificate. *Vansandau v. Corsbie*, 8 *Taunt.* 550. 2 *B. Moore*, 602. *S. C. in error*, 3 *B. & A.* 13. Where the plaintiff accepted a bill for the accommodation of the drawer, the defendant, who afterwards, and before the bill became due, committed an act of bankruptcy, upon which a commission issued, which was afterwards superseded, and another bill was drawn by the defendant, and accepted by the plaintiff for the same debt, with the addition merely of interest and the stamp, and afterwards an effectual commission issued, and the plaintiff paid the second bill, and sued the bankrupt for money paid; it was held, that this was a case within the 49 Geo. 3. c. 121; that the giving the second acceptance did not discharge the original debt for which the plaintiff had become surety before the act of bankruptcy, and that on paying that second bill, the plaintiff was only paying the same debt which he was liable to pay as surety for the defendant on the first bill. *Stedman v. Martinnant*, 13 *East*, 427. This statute does not merely contemplate legal, but equitable liability, and therefore, where on the dissolution of a partnership, one of the partners covenants to indemnify his copartner against payment of the debts, and becomes bankrupt, and the co-partners are compelled to pay, they may prove against the estate of their co-partner. *Wood v. Dodgson*, 2 *M. & S.* 196. *Ex parte Ogilby*, 3 *V. & B.* 133. *and see Ex parte Yonge, Id.* 31. 2 *Rose*, 40. *S. C.* The statute does not compel the surety to prove, and therefore before the bankrupt has obtained his certificate, the surety may, on being compelled to pay, sue the bankrupt, although the holder has proved the bill under the commission, against the bankrupt drawer. *Mead v. Braham*, 3 *M. & S.* 91.

Proof of bills—cross bills in general.] A bill, which on

account of the want of consideration, could not be enforced between the parties at law, *see ante, Chapter* V., is not proveable. But where there is an exchange of acceptances, as where A. draws bills upon B., and B. in return draws upon A., there is on both sides a good consideration, and if either A. or B. becomes bankrupt, the other may prove the bills accepted by him against his estate, as if they had been taken for value in the usual course of business. Thus, where A. accepted a bill drawn by B., and B. accepted a bill drawn by A. for the same amount for their mutual accommodation, and before the bills became due, A. became bankrupt, and B. having paid the amount of his own acceptance, (deducting the dividend received by the holder from the estate of A.), sued A. on his acceptance, who pleaded his bankruptcy, the court of Common Pleas were of opinion that the two bills were mutual engagements, constituting on each part a debt, the one being a consideration for the other; that the bill in question was not given as an indemnity, which was in its nature conditional, but created an absolute debt from the beginning which was capable of being proved under the commission, and being so proveable, was necessarily barred by the certificate. *Rolfe v. Caslon*, 2 *H. Bl.* 571; *and see Ex parte Greenwood, Buck*, 239. The Peters's and the Dunlops exchanged acceptances to a large amount, and it was agreed, that each were to pay their own acceptances. Both became bankrupt and obtained their certificates. Peters's acceptances were partly paid by them before their bankruptcy and were proved for the residue. Dunlops' acceptances were also proved against the Peters's estate as drawers, and the full amount thus paid by the Peters's, and their assignees, exceeded the amount of their acceptances, for which they were bound to provide, by a considerable sum, for which the assignees of the Peters's sued the Dunlops as for money paid to their use. The Dunlops pleaded their bankruptcy, and the court of K. B. were divided on the question, whether the bankruptcy operated as a discharge. *Lawrence J.* and *Grose J.*, on the authority of *Rolfe v. Caslon* (*supra*), thought that the certificate was a bar; but *Ashhurst J.* and *Lord Kenyon C. J.* were of a different opinion. *Cowley v. Dunlop*, 7 *T. R.* 565.

It is not material that the acceptances given in exchange are not the acceptances of the party giving them; nor is it necessary in order to constitute an exchange of securities, that the bills should be precisely of the same amount or for the same time, provided the circumstances of the case shew that it is an exchange. Thus, where the defendants gave the plaintiff their own bills, accepted by third persons, in exchange for bills of the defendants upon, and accepted by, the plaintiff, and the different sets tallied in the gross amount, except a few shillings in one instance, which were paid at the time, in order as it was

said, to finish the transaction, and except that in two instances out of five, the acceptances given by the defendants were payable two days before the counter acceptances of the plaintiffs, it was held that this was an absolute exchange of acceptances; that each party's remedy was upon the bills given by the other only, and that the defendants having become bankrupts, and the plaintiff consequently forced to pay the balance of his own acceptances, (beyond the dividend received from the defendant's estate,) could not recover that amount in an action against the defendants for money paid. *Buckler v. Buttivant*, 3 *East*, 72.

Where in case of cross acceptances, one of the parties has become bankrupt it has been made a question, whether the proof of his acceptance can be allowed before the other party has satisfied his own, or whether he shall merely be restrained from receiving the dividends until such satisfaction. *In re Boroness, Co. B. L.* 161. In one case it is said by Mansfield C. J., that until the party proving has paid his counter bill, the court of Chancery will restrain him from receiving any dividend. *Sarratt v. Austin*, 4 *Taunt.* 207. *Ante, p.* 320. Where bankers accepted bills for a customer, and advanced money, and discounted bills for him, and the customer became bankrupt, and the bankers at the time of the commission were under acceptances for the bankrupt, and had bills drawn by the bankrupt and accepted by different persons, remitted by their customer before his bankruptcy, and the bankers proved as upon a balance of accounts, the Chancellor held, that though the form of the proof was wrong, yet, that the bankers were intitled to prove the bills upon which the bankrupt's name appeared, to cover their acceptances which had not been made good. *Ex parte Bloxham*, 8 *Ves.* 531. It is said that it seems now to be a settled rule, that the surety claiming to come in as a creditor, must, before he can be permitted *to prove*, take up his own bills or exonerate the bankrupt's estate from the original debt. *Eden's B. L.* 150. 2*d Ed.*

Proof of bills—where there are cross bills and a cash account, and both the parties become bankrupt.] Several cases have arisen as to the proof of debts, where there have been cross bills negotiated between the parties, and where there is also a cash account, and both of the parties have become bankrupt. Of some of these cases it is extremely difficult to discover the principle. Various accommodation transactions had for many years taken place between Caldwell & Co. and the Brownes. The former were the bankers of the latter. A commission of bankruptcy issued against Caldwell & Co., in March 1793, and in the same month the Brownes became bankrupt. An account was then taken of the mutual debts and credits. That account consisted first of a cash account, which included good bills as well as payments in cash;

and secondly, of a bill account, which related exclusively to bills which had beeen passed by one house to the other, and which were all ultimately dishonored. The result was, that on the cash account the Brownes were indebted to Caldwell & Co., in the sum of 40,716*l.*, and that, on the bill account, Caldwell & Co. had received from the Brownes bad bills, to the amount of 305,149*l.* 19*s.* 10*d.*, and the Brownes had received from Caldwell & Co. bad bills to the amount of 204,910*l.* 5*s.* Of the bad bills, received from Caldwell & Co., the Brownes had negotiated bills to the amount of 196,589*l.* 6*s.* 4*d.* and of those received from the Brownes, Caldwell & Co. had negotiated bills to the amount of 126,855*l.* 11*s.* 10*d.* having retained the residue, viz. 178,294*l.* 8*s.*, at the request of the Brownes. All the bills received by the Brownes were discountable, and upon most of them they had received the full value, and Caldwell & Co, had no consideration for them, but the bad bills received from the Brownes. All the bills(or nearly so)which the Brownes had negotiated were proved against the estate of Caldwell & Co., and by far the greater part against the estate of the Brownes also; but to a large amount viz. 80,000*l.* the Brownes had deposited bills as a security for the payment of a much smaller sum, so that the proof against them in respect of those bills was only for the sum really due, whereas against Caldwell & Co. the proof was for the whole sum payable on the bills; and the consequence of this, and of the unequal negotiation of each other's bills was, that a much larger sum was proved against Caldwell & Co., in respect of bills negotiated by the Brownes, than against the latter in respect of bills negotiated by the former. Caldwell & Co. on petition, claimed the right to prove the bills which still remained in their hands, in order to be reimbursed the difference. But Lord Loughborough C. said, "Till Caldwell & Co. pay all the creditors of Browne, who are likewise creditors of theirs, 20*s.* in the pound, they would be, by proving, sharing with the creditors of Browne, who are likewise creditors of theirs. If I allow this petition, I must do two things that are quite impossible. I must hold that the bankruptcy creates a debt which did not exist antecedently; and I must hold, that the same debt may be proved twice." The proof was confined to the balance of the cash account only. *Ex parte Walker*, 4 *Ves.* 373. *as abstracted by Mr. Justice Bayley, not only from Mr. Vesey's, but from Mr. Cooke's, report of the case. Bayley*, 350. So where a petition was presented by the assignees of a bankrupt, the object of which was similar to that of the petition, *Ex parte Walker* (*supra*), to prove, not only for the cash balance between the two bankrupts' estates, but also in respect of the dishonored bills, upon a similar issue of cross paper dishonored on both sides, part of which having been negotiated, was proved by the holders against both estates, Lord Loughborough, C. said, "Upon the consideration of the case, *Ex parte Walker*, it

struck me, that there were but two ways of taking it as between the two estates, either to consider all the bills as struck out of the case entirely, as issued for a bad purpose, like gambling transactions, &c. upon which there could be no proof, or to consider them all as good bills. I do not see that there is a middle course." The order was pronounced, that the petitioners should be at liberty to prove the cash balance only. *Ex parte Earle*, 5 *Ves.* 833. The principle of the two foregoing decisions was much canvassed by Lord Eldon in the case of *Ex parte Rawson*, 1 *Jacob*, 274. His Lordship there said, "I think I argued that case of *Ex parte Walker*, and I must say that the speculations about paper, certainly outran the grasp of the wits of courts of justice. This sort of circulating medium puzzled as able a man as ever sat here, Lord Thurlow. I remember the first case of it. It was then small in amount, one bill and another. He then considered the acceptance of the one as a consideration for the other, and allowed both to prove, but then there was this difficulty, that it lessened the fund for paying the holder of the bill, and thus by proving, they prejudiced their own creditors. It was found this would not do, and then it was said, 'if you will prove, you must first take up your acceptance,' which got rid of the objection of the party proving in competition with his own creditor. Then came the case of those houses at Liverpool and Manchester drawing on one another to the amount of 50,000*l.* What was to be done then? The court were puzzled and distressed. At last, however, we came to a sort of anchorage in that case, *Ex parte Walker*; I have no difficulty in saying that I never understood it: I am satisfied that though no doubt the court understood that judgment, yet none of the counsel did. The decision was this: that where there are cross bills drawn for accommodation, they are all to be thrown out of the account on both sides, and it is to be taken as if it were a cash balance only. If this were upon the principle that applies to one or two bills, that they are not to be proved by one estate against the other till all the creditors of both are paid, I could understand it. If there be 1000*l.* of acceptances on the one side, and 10,000*l.* on the other, Lord Loughborough says that they are not to be regarded at all, that it is all chance how the two estates may pay. I say not; and if there be a surplus of one estate to satisfy the other, why should it not be applied? Look at the case of partnership; a partner cannot prove against the estate of his copartner, so as to affect the creditors of both, but he may be paid his demand out of the surplus, if there is any. I do not see why the same rule is not to be applied here." His Lordship at the conclusion of his judgment observed, "I cannot bring myself to think that the case of *Ex parte Walker* is right, if there is a surplus." In the following case there were no cross bills, but dishonored bills on one side were struck out of the ac-

count. Palmer received from Williamson in cash and bills, 6424*l.* 9*s.* 3*d.*, and Williamson received from Palmer in cash 5824*l.* 19*s.* 7*d.* Both became bankrupt. Palmer had negotiated the bills, some of which, drawn by Williamson, to the amount of 1098*l.* were refused acceptance, and were proved under both commissions. Palmer's assignees contended that the 1098*l.* should be deducted from the 6424*l.* 9*s.* 3*d.* which would reduce the sum received by him, and would leave a balance of 498*l.* 10*s.* 4*d.* in his favour, which they petitioned to be allowed to prove against Williamson's estate. Lord Eldon, C. after considering how the question would stand in case the parties had not become bankrupt, said "If between these parties considered as solvent, Williamson is entitled to say Palmer should not have the 498*l.* until he had restored the bill, being put into his hands as a medium of raising money, and the first obligation was upon Palmer, what difference does the bankruptcy make? No other difference than this; that if the assignees of Williamson protect his estate against any liability upon the bill, Palmer's estate is entitled to a dividend upon the sum of 498*l.* that is, in order to keep the accounts finally right, Williamson's estate is entitled to retain the dividends due to Palmer's estate, to the extent of making them applicable to protect the estate of Williamson against the bill." "To alter this decision," added his Lordship, "it must be shewn not only that the bills were accepted by Goodenough (the drawee) but that they were accepted on account of what the acceptor owed to Williamson." *Ex parte Metcalfe*, 11 *Ves.* 404. At the time of the bankruptcy of Lynn, the account between him and the petitioner Read stood thus: there was a cash balance of 3,576*l.* 8*s.* 4*d.* including therein a sum of 1,603*l.* 17*s.* 5*d.* for premiums of insurance, and commission due from Lynn to Read, and Lynn had given his promissory note for the said sum of 1,603*l.* 17*s.* 5*d.* to Read, who had negotiated it, and it was proved under the commission. Read had accepted for the accommodation of Lynn bills drawn by Lynn, to the amount of 6,444*l.* 7*s.* 4*d.* none of which had been paid at the bankruptcy, and they were proved under the commission. Read had likewise guaranteed debts of Lynn to the amount of 773*l.* 1*s.* 5*d.* but had not at the bankruptcy paid any part of those debts, and they were proved under the commission. Lynn had given three bills for 1000*l.* each, drawn by him, on Stalker, to Read, who had negotiated them, and those bills were dishonored, and two of them were proved. The petitioner being insolvent, made a composition, and paid the holders of the bills, accepted for Lynn's accommodation, and the parties whose debts were guaranteed, a composition, amounting to 1,894*l.* 8*s.* 8*d.* The petition prayed that the unpaid bills, or liabilities, might be excluded from both sides of the account, or that the petitioner might debit Lynn's

account with the cash balance of 3,576*l.* 8*s.* 4*d.* and with the balance or difference between the amount of dividends paid by Lynn's estate upon Stalker's bills and Lynn's promissory note, and the amount of the composition paid by the petitioner, and that he might be admitted to prove the balance of the account, according to the declaration of the court. *Per Leach V. C.* " It is not necessary to refer to *Ex parte Walker, and Ex parte Earle (see supra)* inasmuch as the Act of 49 Geo. 3. has introduced a new principle, by which cases of this sort must now be tried. By that act, a surety paying after the bankruptcy can only prove against the estate of the bankrupt where the creditor has not proved, or stand in the place of the creditor on the bankrupt's estate, where the creditor has proved, and there cannot be double proof. Let the case of the accommodation bills be first tried by this principle. Read accepts for the accommodation of the bankrupt, bills to the amount of 6,444*l.* which remain wholly unpaid at the time of the bankruptcy. These bills are all proved by the holders, under the commission, and if Read were now to pay these bills, it would form no ground of further proof, and all that Read could claim would be, to have the benefit of the proofs already made upon these bills against the estate. With respect to the cash balance, that part of it which is represented by the promissory note of 1603*l.* is already proved against the estate by the holder of the note, with whom the petitioner had discounted it, and the actual payment by the petitioner could not give him a larger right than to have the benefit of that proof. The remainder of the cash balance is more than covered by the two bills of Stalker, which have been proved against the bankrupt's estate by the holders with whom the petitioner negotiated them. It is hardly necessary to refer to the debts, amounting to 773*l.* which were guaranteed by the petition, but which have been proved by the creditors against the bankrupts' estate." Petition dismissed. *Ex parte Read,* 1 *G. & J.* 224.

Proof of bills — under several commissions, and amount of proof.] Where several parties to a bill become bankrupt, the holder is entitled to prove the full amount of the bill under the commissions against each; *Ex parte Wildman,* 1 *Atk.* 109. 2 *Ves.* 113 *S. C.*; and the bill may be proved against the estates both of the drawers and acceptors, though the same persons may be both drawers and acceptors, as constituting different firms. *Ex parte Parr,* 18 *Ves.* 65. 1 *Rose,* 76. *S. C.* But where the holder has received a dividend from the estate of one of the parties, he can only prove against the others the amount of the bill, less the amount of the dividend. Thus where the maker and indorser of a promissory note both became bankrupt, and the holder, after receiving a dividend of 6*s.* in

the pound, under the commission against the indorser, applied to prove against the estate of the maker, *Lord Hardwicke C.* at first seemed to think that the holder might prove his whole debt, but upon looking into two cases, the first, *Ex parte Ryswick* (2 *P. Wms.* 89.) before Lord Chancellor Macclesfield, and the second, *Ex parte Lefebre* (2 *P. Wms.* 407.) before Lord Chancellor King, he altered his opinon, and was very clear that the 6*s.* must go in discharge of so much of the debt, and that the holder could only prove the remaining 14*s.* under the maker's commission. *Cooper v. Pepys*, 1 *Atk.* 106. So a dividend declared, though not received, must be deducted. The acceptors and one of the indorsers of a bill became bankrupt at Hamburgh; another of the indorsers became bankrupt in England. The holder caused the bill to be claimed against the estates of the acceptors and indorser, at Hamburgh, according to the course of such proceedings there, and a dividend was declared upon both these estates. The holder not having those dividends, applied to be admitted to prove the whole amount of the bill against the estate of the bankrupt indorser in England. The Lord Chancellor being informed that such was the practice at Guildhall, made the order that the dividends should be deducted, expressing a doubt as to the principle. *Ex parte Leers*, 6 *Ves.* 644. So if the dividend has been declared after a claim, but before proof by the holder on the other estate, the reduction must be made. *Ex parte the Royal Bank of Scotland*, 19 *Ves.* 310. *Ex parte Worrall*, 1 *Cox*, 309. Under special circumstances, this rule was in one case departed from. The holder of certain bills having applied to prove, the opinion of the commissioners was, that the bills payable to fictitious payees were not available securities. The proof was accordingly refused, but a claim was admitted. The question as to the validity of those bills having gone through much litigation in Westminster Hall, (*see ante, p.* 24.) it was at length determined that they were to be considered bills payable to bearer, and the petition which had stood over during that litigation coming on again, the objection was taken, that as no actual proof had been admitted when it was tendered, and some payments had been made upon the bills in the interval, there should be a deduction of the sum received; but it was held that though generally a sum received before the proof admitted must be deducted from the proof, the petition which had been so long depending was in the nature of an appeal from the decision of the commissioners, and the result of that appeal being, that they ought to have admitted the proof, the receipt of a part during the pendency of the petition to correct their judgment, would not prevent the proof then, which ought to have been admitted when it was first tendered. *In the matter of Gibson and Johnson, cited* 19 *Ves.* 311. The following case, also, is an exception to the rule. A. discounted for D., the acceptance of B. C. & Co.'s

for 1364*l.* and sued out a separate commission against B.; at the time of the suing out of the commission, D. had by payments on account, reduced the debt from himself to A. to 420*l.* A. having been admitted to prove the full amount of the bill, the assignee of B. petitioned that the proof might be reduced to 420*l.* but Lord Eldon C. held that as A. (being the petitioning creditor), was the only joint creditor who could come in and prove under the separate estate of B. and receive dividends with the separate creditors, which D. could not; and that as A. was the legal owner, and the bill would be discharged by the operation of the certificate, he was to be considered as a trustee for D. *Ex parte De Tastet*, 1 *Rose*, 10.

With regard to the respective *amounts* of the proof of bills proved under different commissions, it is held, that where a bill or note is pledged with a person as a security for the payment of a smaller sum, the person with whom it is deposited may prove the full amount against all parties, except against the party from whom he received it, provided he do not receive in the whole more than 20*s.* in the pound. Davies gave his note for 500*l.* to Turner and Toye, expressed to be for value received, but in fact for their accommodation, and they being indebted to King in 300*l.*, indorsed the note to him, to enable him to raise that sum. Turner and Toye and Davies became bankrupt. On petition King was allowed to prove the whole amount against Davies's estate, and to receive dividends not exceeding 300*l.* *Ex parte King*, *Co. B. L.* 156. So where a bill for 200*l.* was indorsed by the payee to the petitioner for a debt of 147*l.* (which was afterwards reduced to 46*l.* by payments), and the acceptor became bankrupt, upon which the petitioner claimed to prove the whole amount of the 200*l.* under his estate, till he had received 46*l.*, and the commissioners having refused to allow him to prove more than 46*l.*, petitioned to be allowed to prove for 200*l.*, the petition was allowed. *Ex parte Crossley*, 3 *Bro. C. C.* 237. *Co. B. L.* 157. *S. C.* Kirkpatrick having an account with the petitioners, remitted bills accepted by the bankrupts to the amount of 3869*l.* 10*s.* 3*d.* Kirkpatrick was only indebted to the petitioners in 3234*l.* 12*s.* 11*d.*; on a petition to be admitted to prove the full amount of the bills, and to receive dividends not exceeding 20*s.* on the debt due from Kirkpatrick, Lord Eldon C. said, "I look upon it as settled, that you cannot hold the paper of the bankrupt, and prove beyond your actual debt upon it, but that you may have the paper of third persons; those persons *being indebted to your debtor in more*, and you may prove to the whole amount not exceeding 20*s.* in the pound on the original debt." The order was made as prayed. *Ex parte Bloxham*, 5 *Ves.* 449. But where the bills deposited are accommodation bills, as between the party depositing them, and the bankrupt, it has been doubted whether the party with whom they are deposited can-

prove against the estate of the bankrupt a greater amount than is due to him from the party who deposited them. In *Ex parte King*, *ante*, *p.* 337, the proof was allowed to the full amount; but the contrary was held in the following case: Almond discounted a bill for 342*l.* 7*s.* with the petitioners, and as a collateral security indorsed to them a bill for 459*l.* 6*s.* 10*d.*, accepted by Purdy, and Almond and Purdy became bankrupt; on a petition to be allowed to prove the full amount of the bill for 459*l.* 6*s.* 10*d.* against the estate of Purdy, Lord Rosslyn C. said, "It is not competent for the bankrupt from whom the bill was received, to make any objection to it, but the person *who accepts the bill without consideration*, becomes a bankrupt. The proof then comes upon his estate. Then the oath to be made upon that must truly state the debt, and that is only the sum for which the bill was given as a security. It would be impossible to recover more in an action than the sum really advanced; and it is impossible to allow more to be proved upon the estate than could be recovered upon an action directed, and the bankruptcy not to be set up." Petition dismissed. *Ex parte Bloxham*, 5 *Ves.* 448. However, upon a petition to have this order discharged, it was discharged accordingly by Lord Eldon, his Lordship observing, "There must have been some misunderstanding upon it, for the case was only this. A party wants to have a bill discounted. The banker refuses to discount upon the credit of this bill only. The other says, he has in his hands another bill, and offers that as a security for the former. What is that but a right to prove against both estates until 20*s.* in the pound has been obtained?" *Ex parte Bloxham*, 6 *Ves.* 600. It may, however, be remarked, that the attention of the court does not appear to have been directed to the circumstance that the bill deposited was accepted for the accommodation of the party depositing it, a circumstance which, though not stated in the case, may be collected from the judgment of Lord Rosslyn. In the following case where the bills deposited were known by all parties to be accommodation bills, it was held that they could not be proved for more than the debt actually due. The petitioner sold goods to one Kearns, and Willats accepted bills as a security for the amount. Willats became bankrupt, and the sum due from Kearns to the petitioner being less than the amount of the bills, the petitioner petitioned to be allowed to prove the full amount of the bills. The Vice Chancellor said, "It must be admitted, that if the bankrupt, at the request of Kearns, and without any communication with the petitioner, had put his name to these bills, and Kearns had then delivered them to the petitioner as a security for the goods sold to him, that the petitioner's holding these bills as a collateral security for Kearns's debt, would have been entitled to prove the full amount of them against the bankrupt's estate, and to receive dividends on the full proof,

until the whole of Kearns's debt was paid. A creditor has always a right to make the most of a property pledged with him by his debtor, and the bills of a third person are in this respect like other property. The bankrupt's bills here are not given to Kearns, and handed over by him to the petitioner as a security for Kearns's debt by him. The transaction is immediate between the bankrupt and the petitioner, and the bankrupt gives these bills to the petitioner in payment of goods to the same amount delivered by the petitioner to Kearns. If given in payment of goods delivered by the petitioner to the bankrupt, it is clear that the petitioner could only prove against the estate of the bankrupt the actual sum due, and not the amount of the bills; and I can find no distinction in principle between a bill given by the bankrupt to the petitioner for goods delivered by the petitioner to the bankrupt, and a bill given by the bankrupt to the petitioner for goods delivered by the petitioner to Kearns at the request of the bankrupt. In both cases there is the same immediate contract between the bankrupt and the petitioner, and the bills are equally payment for the goods, and to the extent in which Kearns had advanced the price of the goods, the bills are satisfied." *Ex parte Reader, Buck.* 381.

Proof of bills—where the bills have been deposited as a security.] Where the bankrupt before his bankruptcy has deposited bills with his creditor as a security for a debt, without indorsing the bills regularly, the bills ought to be sold, and the difference between that amount and the amount of the debt proved as part of the debt. Thus, where bankers having proved the whole of their debt, exhibiting bills, deposited with them as securities, afterwards received the amount of several of the bills, the proof was expunged, the bills remaining unpaid were ordered to be sold, and a new proof to be made, deducting all that was received on account of the bills, considering them as mere pledges. *Ex parte Baldwin, cited* 19 *Ves.* 230. But where the bankrupt has indorsed the bills, *primâ facie*, they are not to be treated as mere securities, but the holder has a right to go against all the parties whose names appear upon them. It was agreed between Crossley, the bankrupt, before his bankruptcy, and the Lees, that Crossley should deposit with the Lees bills at long date, which they were to receive or dispose of, and in return to accept Crossley's bills. At the time of the bankruptcy, Crossley owed the Lees 8,007*l.*, and held bills *indorsed* and remitted by him for 7,999*l.* They proved the whole of their debts, exhibiting the bills as securities. The Lees received several dividends, and also upwards of 4,000*l.* on the bills from other parties. The petition prayed that the proof might be corrected, by reducing it to the sum which should appear due, after deducting the money received in respect of the

bills deposited, and an account of the dividends overpaid by mistake. *Per Lord Eldon C.* "The distinction is, that if the subject of deposit is the bankrupt's property, it must be sold; and the excess proved as a debt. Where bills remitted are indorsed, the holder *primâ facie* may go against every one whose name is on them; and all these bills being indorsed, it is upon the other side to shew that the meaning was not to give a demand upon the bills against the drawers and indorsers. This debt, however, is inaccurately proved. The proof should have been upon the bills, and I think Lees' estate intitled to that proof. The real question is, whether these bills were indorsed to Lees as their own, to work out payment of their debt, or merely that they might collect the money, and not to enable them to go against the indorsers; a proposition which the other party must make out. In the case cited (*vide supra*) there was a mortgage, and bills indorsed and not indorsed; and the question was, whether upon the whole, as the mortgage was a security, the bills also indorsed or not indorsed, were intended to be so, and the Lord Chancellor inferred, from the mortgage and the circumstance that some of the bills were not indorsed, that those which were indorsed were sent merely as the others." It being referred to the commissioners to report, and it appearing that the bills were not to be considered as a deposit, the petition was dismissed. *Ex parte Towgood*, 19 *Ves.* 229; *and see Ex parte Rushforth*, 10 *Ves.* 419. But where a bill, with the bankrupt's name upon it, has been deposited as a security for part of a debt owing from the bankrupt, and the creditor proves that debt, stating that he holds the bill as a security, and subsequently by dividends from the estate, and from other parties to the bill, receives 20*s.* in the pound on the bills, the proof will not be expunged, but the creditor will be restrained from receiving further dividends on the amount of the bill. *Ex parte Rufford*, 1 *G. & J.* 41. *but see Ex parte Burn*, 2 *Rose*, 55. *post*. If a bill or note be deposited without indorsement as a security for a less debt, the assignees will be ordered to permit the creditor to sue in their names. Thus, where the payees of a note for 100*l.* deposited it, without indorsing it, as a security for 94*l.* 19*s.* and became bankrupt, on a petition that the assignees might be ordered to indorse the note, the Vice Chancellor said, "This case differs from *Ex parte Mowbray*, (1 *J. & W.* 428.,) where the whole beneficial interest was out of the bankrupt, and he had become a mere trustee; but here by reason of the amount of the note being beyond the debt for which it was pledged, the legal interest in the note passes to the assignees. Let the petitioner be at liberty to use the name of the assignees in an action on the note, if an action be necessary, indemnifying the assignees in respect of such action, and undertaking to pay the surplus to the assignees, if the amount of the note be recovered, and if an action be not

necessary, then let the assignees join in a receipt for the amount of the note on receiving the surplus." *Ex parte Brown*, 1 *G. & J.* 407.

Proof of bills—where there are several bills and one is paid in full, proof reduced.] Where there has been a proof upon several bills, and one of those bills has been paid in full by other parties to it, the proof must be reduced by that amount. Bridges discounted for Cowell, the bankrupt, before his bankruptcy, a bill for 74*l.* drawn by the bankrupt, and accepted by Gillham. This bill was dishonored, and Cowell became bankrupt. Gillham on the bill becoming due, instead of payment, delivered to Bridges a sum in cash, and three bills of 20*l.*, 15*l.* and 15*l.*; Bridges proved on Cowell's estate as for money lent, 143*l.* 18*s.* 3*d.*, which included the 50*l.*, the amount of the balance due on Gillham's bills. These three bills being paid at maturity, Cowell's assignees petitioned to have the amount expunged. *Per Sir J. Leach V. C.* "The law considers each discount transaction, as a distinct, isolated transaction; and though the form of the proof be upon the loan, the proof is in truth upon each bill separately. Upon this principle, I must order the 50*l.* to be expunged." *Ex parte Barratt*, 1 *G. & J.* 327. Aspinall proved under the estate of Moulson, a debt of 2772*l.* 7*s.* 9*d.* as for money had and received, and exhibited as securities four bills, one for 247*l.* 12*s.*, another for 1837*l.* 10*s.*; the first was afterwards paid in full to Aspinall by the acceptors; on the second, the sum of 1534*l.* 6*s.* 3*d.* was paid by different parties; the assignees of Moulson petitioned that on payment of 303*l.* 3*s.* 9*d.* the balance of the bill for 1837*l.* 10*s.* it might be delivered up to them, and that Aspinall's proof might be reduced by the several amounts of 247*l.* 12*s.*, and 1837*l.* 10*s.* *Per Lord Eldon C.* "There is no doubt that Aspinall, having treated these bills as a security in his deposition, and having proved his debt with the exception of them, is now precluded from saying that they are not to be treated as a security, because they are indorsed. The bankrupt was the last indorser of the bills; if they had not been put into the hands of Aspinall they would have remained his property. There is great difficulty in saying, that the assignees have no right to take out of the hands of a depositary property left with him as a security for a debt, covered by payment from other sources. If A. gives B. a bill to the amount of 300*l.* as a security for a debt of 150*l.*; whether A. indorse it or not, as against him, B. can only prove 150*l.*, and he will be a trustee for A. in respect of any surplus he may receive from the other parties to it." *Ex parte Burn*, 2 *Rose*, 55. *but see Ex parte Rufford*, 1 *G. & J.* 41. *ante*, *p.* 340.

Proof of bills—interest.] By statute 6 G. 4. c. 16. s. 57. it is enacted, that in all future commissions against any person or

persons, liable upon any bill of exchange, or promissory note, whereupon interest is not reserved, overdue at the issuing of the commission, the holder of such bill of exchange or promissory note shall be entitled to prove for interest upon the same, to be calculated by the commissioners to the date of the commission, at such rate as is allowed by the court of King's Bench in actions upon such bills or notes. Before this enactment, it was held that interest was proveable where it was made payable in the bill or note; *Ex parte Marlar*, 1 *Atk.* 150, but where the date of the act of bankruptcy was fixed, interest accruing after that period could not have been proved. *Ex parte Moore*, 2 *Br. C. C.* 597. If there is a surplus, such as will afford it on the debts bearing interest, then the creditors having debts due at the date of the bankruptcy, bearing interest, receive subsequent interest, as covered under the debt due at the bankruptcy, though such interest had not accrued at the time of the bankruptcy, nor for many years afterwards. *Per Sir W. Grant, M. R.* 13 *Ves.* 573. As to the mode of calculating interest, in case of a surplus, see *In the matter of Higginbottom*, 2 *G. & J.* 123.

Proof of bills—expenses and re-exchange.] On a petition to be allowed to prove the costs of protesting certain bills, accepted by the bankrupt, protested after the commission issued, Lord Hardwicke C. ordered that the costs of the protests arisen *before the commission* should be proved, but no part of the costs arisen afterwards; *Anon.* 1 *Atk.* 140; and in a subsequent case the proof was confined to the charges incurred before the act of bankruptcy. *Ex parte Moore*, 2 *Br. C. C.* 597. Re-exchange also incurred before the act of bankruptcy is proveable, *Ex parte Hoffman, Co. B. L.* 173; and where by the law of the country certain stipulated damages are to be paid in case of the return of the bill, such damages, though paid after the bankrputcy, have been allowed to be proved. *Francis v. Rucker, Ambl.* 672.

Proof of bills—election.] By stat. 6 Geo. 4. c. 16. s. 59. no creditor who has brought any action or instituted any suit against any bankrupt in respect of a demand, prior to the bankruptcy, or which might have been proved as a debt under the commission against such bankrupt, shall prove a debt under such commission, or have any claim entered upon the proceedings under such commission, without relinquishing such action or suit, and the proving or claiming a debt under a commission by any creditor shall be deemed an election by such creditor to take the benefit of such commission with respect to the debt so proved or claimed. A bankrupt had given to his creditor two bills of exchange, stated in his affidavit to have been given for a *general balance* owing by him to the creditor; but as to this, there was a counter affidavit. The creditor sued the bankrupt,

and took him in execution on *one* of the bills, and on the other being returned proved it under the commission. On an application by the bankrupt to be discharged out of execution, on the ground of election by proof, the Lord Chancellor observed, that it was a remedial law, and must receive a liberal construction, and made the order on the creditor, without prejudice to his proving under the commission. *Ex parte Dickson*, 1 *Rose*, 98. But if a creditor has a note for one sum, and a bond for another, as the remedies and relief under those securities are different, he may prove the one debt, and hold the bankrupt in execution for the other. *Per Lord Eldon C. Ex parte Grosvenor*, 14 *Ves.* 588. So it is said by the Vice Chancellor in *Ex parte Glover*, 1 *G. & J.* 270., that the statute does not appear to apply to actions for distinct demands brought subsequent to claim or proof; that a distinct demand is a demand of a distinct nature, as of *indebitatus assumpsit* and bond. Two parcels of goods were sold at different times, and paid for by bills. The purchaser afterwards becoming bankrupt, the vendors proved under the commission for the amount of the first parcel, they then holding the bill given in payment for the same. The bill for the other parcel having been negotiated by them, prior to the bankruptcy, and being then outstanding, was afterwards dishonored; the court of King's Bench held that the vendors were not precluded from suing the bankrupt for the amount of the last parcel of goods. *Per Holroyd J.* "As both these debts were incurred before the bankruptcy, the plaintiffs might have recovered the whole in one action of *indebitatus assumpsit*, but as far as respects the question before us, I think this case differs from the case of a debt arising out of one entire contract, inasmuch as the plaintiffs could only prove one debt and not the other, and then the statute does not operate except as to such debt so proved, and as to that only." *Watson v. Medex*, 1 *B. & A.* 121. *Harley v. Greenwood*, 5 *B. & A.* 95., *and see Mead v. Braham*, 3 *M. & S.* 91. *ante*, *p.* 329. *Ex parte Lobbon*, 17 *Ves.* 334. 1 *Rose*, 219. *S. C.*

Set off.] By stat. 6 Geo. 4. c. 16. s. 50. it is enacted, that where there has been mutual credit given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, the commissioners shall state the account between them, and one debt or demand shall be set against another, notwithstanding any prior act of bankruptcy committed by such bankrupt, before the credit given or debt contracted by him, and what shall appear due on either side, on the balance of such account, and no more, shall be claimed or paid on either side respectively, and every debt or demand thereby made proveable against the estate of the bankrupt, may also be set off in manner aforesaid against such es-

tate; provided that the person claiming the benefit of such set off had not, when such credit was given, notice of an act of bankruptcy by such bankrupt committed.

Though the bill or note upon which the bankrupt is liable, be not due at the time of the bankruptcy, it may still be set off, on the principle that it is *debitum in præsenti, solvendum in futuro.* A. for goods sold to him by B., accepted two bills; the first due 6th November, 1796; the second, the 9th March, 1797. On 10th November, A. indorsed to B. another bill, as a further security, and B. undertook to pay over the balance to A. after discharging the amount of the first bill. B. received the proceeds of the bill so indorsed, and afterwards, and on 13th December, 1796, A. became bankrupt. His assignees having brought an action for money had and received, to recover the balance so agreed to be paid over by B., it was held that B. might set off that balance against his demand on A.'s acceptance due 9th March, 1797. *Per Grose J.* "It is objected that the defendant cannot set off the 170*l.* (the balance) because it is contrary to his express agreement; but consider that the bankrupt by his agreement was bound to pay his acceptance at a future day, but that his bankruptcy disabled him; that was a credit on one side, and credit was constituted on the other by giving a bill which became due at a subsequent time. It is clearly, therefore, a case of mutual credit, and it is just that one demand should be set against the other." *Atkinson v. Elliott*, 7 *T. R.* 370. But where a bankrupt previously to his bankruptcy, deposited a bill with the defendant, to whom he was indebted, not as a satisfaction of the debt, but as a deposit for the purpose of raising money on it, and the defendant made some advances, but not to the full amount; the assignees having tendered the amount of the money so advanced, brought trover, and it was held that this was not a case of mutual credit, and that the conduct of the defendant was a gross breach of trust, there being an express understanding that this bill was not to go into the general account. *Key v. Flint*, 8 *Taunt.* 21. 1 *Moore*, 451. *S. C.* On petition the Lord Chancellor was of the same opinion. 1 *Swanst.* 30.

Where one Wagstaff accepted a bill drawn on him by the bankrupts, which did not become due until after the commission, and, which when due was paid by him, and was a debtor to the bankrupts for goods sold on credit, which credit had not expired at the time of the bankruptcy; it was held to be within the statute as to mutual credit. *Per Lord Erskine C.*, "The bankrupt being a creditor of the petitioners, drew a bill upon them before his bankruptcy: which bill they accept. Is not this a mutual account? mutual to all intents and purposes?" *Ex parte Wagstaff*, 13 *Ves.* 65. So, where Lord Cork gave the bankrupt his acommodation notes, upon a written under-

taking to indemnify, and paid the notes after the bankruptcy; he was allowed to set off the payment against a demand of the bankrupt for business done. *Ex parte Boyle, Co. B. L.* 542. *and see Arbouin v. Tritton, Holt,* 408. In an action by the assignees of a bankrupt, referred to an arbitrator, he found specially as follows. That the defendant had before the bankruptcy, accepted bills drawn upon him by the bankrupt to a considerable amount; that the bills had been paid away to creditors of the bankrupt, that at the time of his so accepting the bills, the defendant, as the agent of the bankrupt, had in his hands monies of the bankrupt; to the full amount of the sum for which the bills were drawn; that these monies had not been withdrawn from the hands of the defendant before the bankruptcy; and that after the bills had become due, and before the bankruptcy, the holders, in order to relieve the defendant from his responsibility to them, consented to take, and did take from the defendant, a composition upon the acceptances; and upon payment thereof by the defendant the bills were delivered up the defendant, to which arrangement the bankrupt was not a party. The arbitrator's doubt was, whether the defendant ought to be allowed to set off the full amount of the bills, or the amount of composition only. The court of K. B. were of opinion, that he was entitled to set off the full amount, for that, as between the bill holders and the bankrupt, there was a full and complete payment, and that it was a gift to the defendant of the difference between the full amount and the composition. *Stonehouse v. Read,* 3 *B. & C.* 669.

In order to set off a debt due upon a bill or note, indorsed to the party claiming a set off, it must appear that it was indorsed to him before the bankruptcy, though it is not essential that, at the time the bankrupt gives credit, he should know that the bill or note has been indorsed to the other party. *Hankey v. Smith,* 3 *T. R.* 507. *(n.)* In order to constitute mutual credit, it is not necessary that the parties mean particularly to trust each other in that transaction; for if a bill of exchange, which is accepted, be sent out into the world, credit is given to the acceptor by every person who takes the bills. *Per Buller J. Ibid.* Where the defendants being sued by the assignees of a bankrupt, offered in evidence certain bills accepted by the bankrupt, and overdue, and unpaid; but did not prove upon what consideration the bankrupt accepted them, nor at what time nor upon what consideration the bills came to the defendants' hands, nor that their names were on them, nor that there was any original connexion between the defendants and these bills; it was held by the court of C. P. that these acceptances did not constitute a set off. *Per Gibbs J.* "I will not pretend to say whether if the facts were such as suggested by the defendants, they might be entitled to hold it as a mutual credit; but I think, that this is a case in which

the strictest and most particular proof is required, either that the obligations commenced before the bankruptcy, to bring it within the ordinary law of set off, or that there was some connexion in the origin of the transaction to bring it within the cases of mutual credit." *Ouchterlony v. Easterby*, 4 *Taunt.* 888. So where in an action by the assignees of a bankrupt, the defendant produced certain cash notes of the bankrupt, payable to bearer, dated prior to the bankruptcy, but did not prove when they came into his hands; the court of K. B. held that the burthen of proving that the notes came into the hands of the defendant before the bankruptcy lay upon him, and that no such proof having been given, they could not be set off, *Lawrence J.* observed, that if the notes had been made payable to the defendant himself, he should have thought it reasonable evidence of their having come to his hands at the time they bore date. *Dickson v. Evans*, 6 *T. R.* 57. In the following case, the defendant was not put to the same strict proof. He proposed to set off notes of the bankrupts' bank to the amount of 716*l.* and proved that various sums had been paid him in notes of that bank by different persons to the amount of 848*l.*, at various periods, from the 4th to the 27th June, the bankruptcy happening early in July; but he did not identify any of the notes. For the plaintiffs it was proved, that the bankrupts on 16th June pressed the defendant, who had overdrawn his credit, to reduce his balance; that he lived a short distance from the bank; that he might easily have lodged there any notes that he had, and that he had discounted a bill for 100*l.* a very few days before the bankruptcy. A verdict being found for the defendant, a new trial was moved for, but the court of C. P. refused the rule. *Per Gibbs C. J.* "This was an action brought by the assignees of a bankrupt against a creditor of theirs, who seeks to set off against their claim notes, which he says were in his custody at the time of the bankruptcy, and which were in his custody when the action was tried. *Primâ facie*, that is a case for the defendant, if he follows it with some proof that they were in his custody at the time of the bankruptcy. Very particular evidence of that fact is not to be expected, nor that it should be brought quite home to the time of the bankruptcy." *Moore v. Wright*, 6 *Taunt.* 517. 2 *Marsh.* 209. *S. C.*

Where a party indorses a bill, accepted by the bankrupt, and takes it up after the bankruptcy, although, as before stated, he may prove the amount, *ante*, *p.* 326, yet he cannot set it off. The acceptor of a bill for 200*l.* indorsed by the petitioner, becoming bankrupt, the petitioner was obliged to take it up, and being indebted to the bankrupt's estate to the amount of 90*l.* he prayed that he might be at liberty to set off. *Per Lord Loughborough C.* "Pay the 90*l.* that you owe the estate, and prove the 200*l.* I see no objection to that; but you cannot, by paying that bill, put yourself in a better condition than any

other creditor. There was no mutual credit; there was a debt created upon the estate, and due at the time of the bankruptcy, but that debt was not due to you; therefore in that respect the set-off fails." *Ex parte Hale*, 3 *Ves.* 304. A. kept cash with M. & Co. bankers, and accepted a bill drawn by one of the partners in the house of M. & Co. and indorsed by that partner to M. & Co. who discounted it, and afterwards indorsed it for value to S. Before the bill became due M. & Co. became bankrupts, having funds in the hands of S. more than sufficient to pay the bill, and having in their hands money belonging to A. When the bill became due, S. presented it for payment to A. and payment being refused, S. paid himself the amount out of the funds of M. & Co. remaining in his hands, and delivered the bill to their assignees. In an action brought by the assignees against A. as acceptor of the bill, it was held, that there had been before the bankruptcy a mutual credit between the bankrupts and A. and that the latter was entitled to set off against the sum due to the bankrupts on the bill, the debt due to him from M. & Co. at the time of their bankruptcy. *Bolland v. Nash*, 8 *B. & C.* 105.

Bills and notes of which the bankrupt is the reputed owner.] By stat. 6 Geo. 4. c. 16. s. 72. if any bankrupt, at the time he becomes bankrupt, shall by the consent and permission of the true owner thereof have in his possession, order, or disposition, any goods or chattels whereof he was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition, as owner, the commissioners shall have power to sell and dispose of the same for the benefit of the creditors under the commission. Bills of exchange are goods and chattels, within this statute. *Hornblower v. Proud*, 2 *B. & A.* 327. Many cases have arisen, as to what bills are to be considered in the possession, order, or disposition of the bankrupt.

In the following cases, the bills have been held to pass to the assignees of the bankrupt, on the ground that they had been transferred to the bankrupt, and were not deposited in his hands for a particular purpose. Hornblower & Co. applied to Gibbons & Co. country bankers, to discount for them three bills of exchange, by giving them a bill on Esdaile & Co. bankers in London, for the amount. That bill was given, but refused acceptance by Esdaile & Co. The bills discounted were remitted by Gibbons & Co. to Esdaile & Co. who placed them to the credit of Gibbons & Co. The latter became bankrupt, and at that time were indebted to Esdaile & Co. on the balance of accounts, but ultimately the balance due from Esdaile & Co. to the bankrupts exceeded the amount of the bills discounted. Hornblower & Co. sued the assignees of Gibbons & Co. in trover, and the court of King's Bench held that they were not entitled to recover, on the ground that the property in the bills in question actually passed to Gibbons & Co. by the exchange of securities, or that supposing the exchange not an absolute

transfer, yet that the bills being negotiable securities, which the bankrupts might dispose of, and which remained in their possession till the time of their bankruptcy, that they were within the operation of the statute. *Hornblower v. Proud*, 2 *B. & A.* 327.

Allport kept cash with Kensington & Co. bankers, and they discounted for him certain bills. They credited him with the amount of the bills, and debited him with the discount, so that after deducting the discount, they were placed to his account as cash, which he might immediately have drawn out. Kensington & Co. became bankrupt, and in an action by their assignees on one of these bills, it was insisted, that they did not pass to the plaintiffs. But, *per Lord Ellenborough*, "The bankers were the purchasers of this bill. They did not receive it as the agents of Allport. The whole property and interest in the bill vested in themselves, and they stood all risks from the moment of the discount. If the bill had been afterwards stolen or burnt, theirs would have been the loss. In *Giles v. Parkins*, (3 *East*, 13. *post*, *p.* 352.), the bankers were mere depositories, with a lien when the account was overdrawn. The customer there drew upon the credit of the bills deposited. Here Allport might have drawn out the amount of the bill, deducting the discount as actual cash, in the same manner as if he had discounted the bill with a third person, and then paid in the amount in bank notes." *Carstairs v. Bates*, 3 *Campb.* 301. But where there was an agreement to pay into a bank, consisting of four partners, bills of exchange indorsed, and to take in return their promissory notes, and three of the four partners became bankrupt, after which bills were paid in, and the notes of the bank taken, and the fourth partner then became bankrupt, it was held that the bills so paid in did not pass to the assignees, for the contract was to pay in the bills to the four, and to receive the notes of the four, and this not being done, the consideration failed, on which the bills were parted with, and the assignees were not entitled to retain them. *Ex parte M'Gae*, 2 *Rose*, 376.

Where a bill is deposited with a banker for a particular purpose, as for the purpose of receiving payment of it for the owner, although the banker has the power of transferring such bill (being indorsed), yet if not transferred it will not pass on his bankruptcy to his assignees. Zinck employed Jenner as his banker in London, and drew bills on him, under an agreement to make remittances to answer the same when due. Zinck remitted two bills, and Jenner became bankrupt, and the proceeds of the bills came to the hands of his assignees. In an action against them for money had and received, it was held that Zinck was entitled to recover, subject to the lien of Jenner. *Zinck v. Walker*, 2 *W. Bl.* 1155. So where Aikin accepted bills payable at the house of certain London bankers,

and paid into the hands of Aspinalls, the country correspondents of those bankers, bills to provide for those acceptances, and such bills were entered (not short) but in the same column with the cash paid in by him, and Aspinalls became bankrupt, the Vice Chancellor held that this was a specific appropriation of the bills, and that they did not pass to the assignees. *Ex parte Aikin*, 2 *Madd.* 192. So where A. desired leave to place certain long bills in the hands of B. (a merchant), and to be allowed to draw bills of shorter dates, desiring B. to calculate the sum to be drawn for allowing commission, and B. answered that agreeably to A.'s wishes, he had discounted the bills, and then specified the amount to be drawn for, B. having become bankrupt with the long bills in his hands, it was held that the transaction was not a discount, but that it was merely a deposit of the bills to answer a particular purpose, and that they did not pass to the assignees of B. *Parke v. Eliason*, 1 *East*, 544. And see *Took v. Hollingworth*, 5 *T. R.* 215. 2 *H. Bl.* 501. *S. C.* *Bent v. Puller*, 5 *T. R.* 494.

Sargeant employed Burrough as his banker, and paid bills and cash indiscriminately into the bank, which were entered without distinction in a general running account; shortly before Burrough's bankruptcy, Sargeant paid two bills into the bank, who remitted them to K. & Co., his agents in London, in whose hands at the time of his bankruptcy he had a considerable balance. Sargeant insisted that he was entitled to these bills. *Per Lord Eldon C.* "It is quite clear that short bills in the possession of bankers are to be considered as still remaining in the possession of the parties, by their agents, to be specifically returned; and if these bills were written short, the petitioner could have compelled K. & Co. so to settle with Burrough as not to break in upon his claim. That they were not written short amounts to nothing, unless there be a concurrence manifested at the time, or to be inferred from the habits of dealing between the parties, that they were to be considered as cash; if they were there with the petitioner's knowledge, as cash, and he drawing or entitled to draw upon them, as having that credit in cash, he would thereby be precluded from recurring to them specifically; but it is upon them to prove that to be the case, and the petitioner is therefore entitled, unless they have been carried to his credit as cash, with his knowledge or consent." *Ex parte Sergeant*, 1 *Rose*, 163. *And see Ex parte Sollers*, 18 *Ves.* 229. Several cases on this subject arose out of Boldero's bankruptcy, but as the facts of those cases are only to be gathered from the conflicting affidavits of the parties, it is impossible to state them here. Some of the most important portions of the judgments of the Lord Chancellor are however given below. *In Ex parte Pease*, in which it was held that the party lodging the bills was entitled to them on the bankruptcy of the banker with whom they were lodged,

Lord Eldon said, "It is of no importance whether a bill is written short or not; by this I mean that writing a bill short is merely evidence, (*see Ex parte Aikin*, 2 *Madd.* 198.) *Ex parte Dumas*, (1 *Atk.* 232.) and the other cases referred to prove this, that a letter accompanying a remittance is evidence which cannot be got rid of by the unauthorised subsequent act of the banker in writing them short. The question is, what is the contract upon the whole? If the contract is, you shall debit and credit cash against cash, and consider the bills sent, until they have been matured into cash, as the property of the remitters, the right of the petitioners to the bills is clear." *Ex parte Pease*, 1 *Rose*, 239. 19 *Ves.* 25. *S. C.* In the case of *the Wakefield Bank*, who employed Bolderos, the bankrupts, as their town agents, paying them a commission, there was no express declaration that the bills were not do be considered the property of Bolderos, and the latter house had been in some instances permitted to discount the bills remitted to them; notwithstanding these facts, the Lord Chancellor was of opinion that the bills which were not discounted did not pass to Bolderos' assigness. "The question," his Lordship observed, "in the absence of such express declaration is, do the circumstances, independent of what appears on permissive discount, satisfactorily make out, that the short bills are to be considered as the property of the London banker and agent, paid for the agency, and not of the country banker and principal? In regard to the permissive discount, if the general contract be that you are not to discount without my permission, the general contract applies wherever I have not given that permission." *Ex parte the Wakefield Bank*, 1 *Rose*, 252. 19 *Ves.* 25. *S. C.*

The case of the Leeds Bank was distinguishable from the two former cases in this, that the bank authorised Bolderos to discount undue bills to reduce the cash balance when they should be in advance. The Lord Chancellor was of opinion that this case fell within the same rule as the preceding. "The permission," observed his Lordship, "to discount in this case is limited by the purpose for which it was given (i. e.) to reduce the cash balance; can it make any difference whether, as in the last case, the permission be special and limited to an express sum or to so much as will meet the cash advanced, be it 7000*l.* or 12.000*l.*? Can the sums being ascertained or not make any difference or extend the right into an absolute authority?" *Ex parte the Leeds Bank*, 1 *Rose*, 254. 19 *Ves.* 25. *S. C.* Rowton and Co. country bankers, had remitted to their London agents, Brickwood and Co., who afterwards became bankrupt, 21,000*l.* cash and 20,000*l.* short bills. Brickwood & Co. had accepted bills drawn upon them by Rowton & Co. to the amount of 26,000*l.*; neither the short bills nor the acceptances were due at the time the commission issued. Rowton & Co. petitioned to have delivered up to them

the excess of the short bills, beyond what was sufficient with the cash balance of 21,000*l.* to cover the outstanding acceptances. The Lord Chancellor ordered the short bills to be delivered up; the consent of the Crown, who had an extent against the bankrupts' property, being first obtained. *Ex parte Rowton,* 17 *Ves.* 426. 1 *Rose,* 15. *S. C.* In a similar case a similar order was made, the petitioners undertaking to leave with the bankrupts' estate, bills sufficient to meet the acceptances, which it was liable for on the petitioners' account, and being ordered to give security that those bills should be paid when due. *Ex parte Buchanan,* 1 *Rose,* 280. In another case the right to receive back the short bills was considered indisputable, and the following order was made, "The provisional assignee to retain the cash balances, and the cash received on the short bills paid; and also a sufficient number of the short bills unpaid, to cover the amount of the bankrupts' acceptances; the provisional assignee to deliver over to the petitioners the residue of the bills, notes, and securities. It is further understood that the cash and notes retained are to be delivered up, as the petitioners produce the acceptances cancelled." *Ex parte Harford,* 2 *Rose,* 162. *Ex parte the Burton Bank, Id.* 163. *See also Ex parte Smith, Buck,* 355. It is not essential, in order to enable the party paying in bills to his banker, to reclaim them, that such bills should be entered *short. Ante, p.* 350. The plaintiffs paid into the bank of D & Co. on their banking account, bills which they indorsed. It was stated to be the custom of this and of other banking houses in the country, that when bills not due were brought by a customer, they were entered in a gross sum with cash or paper immediately payable, to the credit of the customer, giving him either cash, or liberty to draw to the amount; and that the bankers so far considered these running bills as their own, that they would, as convenience required, pay them away to their customers in the usual course of business, or transmit them to the correspondents in London. D & Co. became bankrupt, and their assignees received the amount of the bills, the balance of the cash account at the time of the bankruptcy, being in favor of the plaintiff. The court of K. B. held that the plaintiffs were entitled to recover the amount. *Per Lord Ellenborough,* "Every man who pays bills not then due into the hands of his banker, places them there as in the hands of his agent to obtain payment of them when due. If the banker discount the bill or advance money upon the credit of it, that alters the case; he then acquires the entire property in it, or has a lien *pro tanto* for his advance. The only difference between the practice stated, of London and country bankers, in this respect is, that the former, if overdrawn, has a lien on the bill deposited with him, though not indorsed; whereas the country banker, who always takes the bill indorsed, has not only a lien upon it, if his account be overdrawn, but has also his le-

gal remedy upon the bill by the indorsement; but neither of them can have any lien on such bills until their account be overdrawn, and here the balance of the cash account at the time of the bankruptcy, was in favor of the plaintiffs." *Giles v. Perkins*, 9 *East*, 12. So where the customer paid bills into the bank, which he indorsed, and these bills were not written short, but entered thus on the credit side of the pass book;

	£.	s.	d.
By balance.....	1300	0	0
Bills.....	750	0	0

and the customer was allowed to draw cash for the amount, interest being charged on all payments on both sides, and it was proved to be the constant usage and course of dealing of this bank and of others in the county of Lancaster, to use bills so paid in by paying them away to their customers as they thought fit; the court of K. B. held that on the bankruptcy of the bankers, the bills so paid in did not pass to their assignees. *Per Holroyd J.* "In order to change the property, it must be shewn that the bankers bought the bills or discounted them, which is indeed the same thing; then the customer might have immediately sued the bankers for the price which they agreed to give for the bills, but still retained in their hands; and if the customer did not indorse the bills, and they were afterwards dishonored, the bankers under such circumstances would have no remedy against them. Is there sufficient in this case to show that the bills were either bought or discounted by the bankers, so as to make the price the property of the customer? They were entered as bills, not as cash, and even if the latter mode of entry had been adopted, it would still, according to *Giles v. Perkins*, admit of explanation." *Thompson v. Giles*, 2 *B. & C.* 422.

Although the party who deposits bills with a banker, cannot reclaim them without indemnifying the estate of the banker who has become bankrupt against any acceptances for which the estate is liable for him, yet the holder of such acceptance has no equity to have the bills thus deposited, applied specifically in discharge of the acceptance. *Ex parte Waring*, 2 *Rose*, 182.

CHAPTER XV.

OF LOST AND STOLEN BILLS, &c.

In what cases the loser of a bill or note may recover on it.
In what cases the drawer may be compelled to give another bill.
What circumstances are proof of bona fides *in receiving lost or stolen bills, &c.*
Between what parties it is a good defence that the bill has been lost or stolen.
Conduct to be pursued in case of loss or robbery of bills, &c.
Remedy against the postmaster or his servants for lost or stolen bills.
Who shall bear the loss in case of bills, &c. sent by the post and lost.

In what cases the loser of a bill or note can recover upon it.] Where a bill or note is lost, and at the time of the loss, is in such a state as that it is possible that it may come into the hands of a *bonâ fide* holder for value, who may be intitled to sue upon it, the party losing it will not be intitled to recover upon it without producing it. Thus, where a bill was lost after being indorsed by the payee, it was held by Lord Ellenborough, that although, if destroyed, evidence of its contents might have been received, yet if lost, no action would lie against the acceptor without producing the bill, although the plaintiff had offered an indemnity, for it might be in the hands of a *bonâ fide* indorsee for value, who might maintain an action upon it against the defendant. *Pierson v. Hutchinson*, 2 *Campb.* 211. 6 *Ep.* 126. *S. C.* So where a bill indorsed in blank had been picked out of the pocket of the attorney's clerk shortly before the trial, Gibbs C. J. nonsuited the plaintiff on the ground of the

non-production of the bill. *Poole v. Smith*, *Holt*, 144. And so in an action by the indorsee against the acceptor of a bill, where it appeared that the bill had been lost before it became due, but that the defendant when it became due had promised to pay it, it was held that the plaintiff, who by his negligence, had exposed the defendant to the danger of being compelled to pay the bill when produced in the hands of another holder, was not intitled to recover. *Davis v. Dodd*, 4 *Taunt.* 602. So where a check was given for stock sold, and lost on the same day, and four months afterwards, the bankers on whom it was drawn stopped payment, and the seller of the stock sued the buyer for stock sold, Lord Ellenborough held that the action could not be maintained, for the check might have got into the hands of a person who might maintain an action on it. The very day it was lost it might have been passed for value to a *bonâ fide* holder without notice. *Bevan v. Hill*, 2 *Campb.* 381. And in action by the payee against the maker of a note, where it appeared that the note had been lost, Lord Ellenborough was of opinion that the plaintiff could recover, neither upon the original consideration nor upon the note, for as the note, for anything that appeared in evidence, was in existence, it might be still in circulation, and the defendant be liable to be called upon to pay it. *Dangerfield v. Wilby*, 4 *Esp.* 159; *and see Champion v. Terry*, 3 *B. & B.* 295. *Rolt v. Watson*, 4 *Bingh.* 273. *Ante*, *p.* 102. Where a traveller received a provincial bank note, payable to bearer, which he cut in two, and sent the halves on different days by the post, addressed to his employers in London, and one of the halves was stolen from the mail-coach, Lord Ellenborough held that an action could not be maintained on producing the half which had arrived safely. He said that payment could only be inforced at law by the production of an entire note, or by proof that the instrument, or the part of it which was wanting, had been actually destroyed; that the half taken from the mail might have immediately got into the hands of a *bonâ fide* holder for value, and he would have as good a right of suit upon it as the plaintiffs. *Mayor v. Johnson*, 3 *Campb.* 324; *see Mossop v. Eadon*, 16 *Ves.* 430., and *quære* whether a person taking half a note, could be held to take it *bonâ fide*. So in an action by the indorsee against the acceptor of a bill lost after it became due, it was objected for the defendant, that the action could not be supported without the production of the bill, and *Littledale J.* expressed a strong opinion against the right of the plaintiff to recover, and directed a nonsuit with liberty to the plaintiff to move to enter a verdict. *Hansard v. Robinson*, *Ry. & Moo.* 404. (*n.*) Upon motion for a new trial, the court held that the plaintiff was not intitled to recover, for that by the custom of merchants, the acceptor, on payment, had a right to the possession of the bill, and though it was lost after it became due,

that the holder could not cast the burthen of proving this fact on the acceptor, in case of another action brought against him on the bill. 7 *B. & C.* 90.

But where a bill or note is lost, and at the time of the loss is in such a state as that it cannot be available even in the hands of a *bonâ fide* holder for value, it has been held that the party losing it may recover upon it without production. Thus, where one half of a promissory note, not payable to bearer or order was lost, and the loser filed a bill in equity for relief, the Master of the Rolls dismissed the bill, on the ground that an action at law would lie upon the note. *Mossop v. Eadon*, 16 *Ves.* 430. So where a bill is lost, which was *specially indorsed* to the party losing, it has been held that he may recover upon it without production. Thus, in an action against the acceptor by an indorsee, to whom the bill had been specially indorsed, on proof of the bill having been stolen, the plaintiff was allowed to take a verdict. *Long v. Baillie*, 2 *Campb.* 214. (*n.*) And where a bill was lost *after it was due*, and after the commencement of an action, the court referred it to the master to see what was due for principal and interest, on the production of a copy of the bill verified by the affidavit of the plaintiff's attorney that the bill had been stolen from his pocket. *Brown v. Messiter*, 3 *M. & S.* 281. In the following case also the plaintiff was allowed to recover. The clerk of the plaintiff's attorney proved that he had lost a bill from which he had drawn the declaration in the cause, and that it was correctly set out in the count. He proved also, that before the loss of the bill it had been shewn to one Reynolds, and that the loss occurred after the cause had been set down for trial. The record shewed, that this was after the maturity of the bill as stated there. Reynolds being called, proved that the bill shewn him had an acceptance in the defendant's handwriting. Pugh, another witness, proved that he had received from the drawer, who was also the indorser, a bill indorsed with his name, corresponding with the bill set out in the record, and had delivered it to the plaintiff, and that both these transactions were for value. The plaintiff's attorney then proved that he had received the bill, on which the action was brought, from the plaintiffs, and handed it to his own clerk, directing him to draw a declaration from it, which he saw him do. The draft of the declaration was then put in and read as evidence of the bill. *Abbott C. J.* (the cause being undefended) said that the proof was perfectly satisfactory, and there was a verdict for the plaintiff. *Glover v. Thompson, Ry. & Moo.* 403.

It has been said that a distinction may be taken with regard to a bill indorsed in blank and lost *after it has become due*. As the finder could not in that case give an effectual right of action, even to an indorsee for value, and without notice, it may be thought that the acceptor cannot insist upon an indemnity,

and that the interference of a court of equity would be unnecessary, but as the plaintiff would make out a *primâ facie* case, by proving the acceptance and indorsement, it would be hard to expose the acceptor, after payment of the bill without any indemnity, to the hazard of shewing by legal evidence, that the bill had been lost after it became due. 2 *Campb.* 214. (*n.*) In several of the above cases, however, in which it has been held, that the plaintiff was not intitled to recover, it will be seen that the bill was lost after it became due, and the point was finally determined against such an action in the case of *Hansard v. Robinson*, 7 *B. & C.* 90. (*supra.*) From the principle upon which that case proceeded, viz. that the acceptor has a right to the possession of the bill on payment by him, it may be doubted whether even when the bill lost was specially indorsed, the loser would be intitled to recover without production.

In what cases the drawer may be compelled to give another bill in case of loss.] By 9 & 10 Wm. 3. c. 17. s. 3. In case any *such* [as it seems, inland bill payable a certain time after date, and expressed to be for value received] inland bill or bills of exchange shall happen to be lost or miscarried within the time before limited for payment of the same, then the drawer of the said bill or bills is or shall be obliged to give another bill or bills of the same tenor with those first given, the person or persons to whom they are or shall be so delivered, giving security, if demanded, to the said drawer, to indemnify him against all persons whatsoever, in case the said bill or bills of exchange so alleged to be lost or miscarried, shall be found again. The 3 & 4 Ann. c. 9. which gives the like remedies upon promissory notes, which were then in use on inland bills, may be considered to have extended this provision to the case of promissory notes. It seems that the remedy under this statute is in equity. Thus, it is said by Lord Tenterden, that in case of a lost bill the loser may tender sufficient indemnity to the acceptor, and if it be refused, he may enforce payment thereupon in a court of equity. *Hansard v. Robinson*, 7 *B. & C.* 95.

Where the party who has lost the bill might recover upon it notwithstanding at law; equity will not grant relief. *Walmsley v. Child*, 1 *Ves. sen.* 341. *Mossop v. Eadon*, 16 *Ves.* 430. But where a bill was lost, after indorsement, and one of the parties to it became bankrupt, the Chancellor ordered that the party who had lost the bill should be admitted to prove, upon giving an indemnity to be settled by the commissioners. *Ex parte Greenway*, 6 *Ves.* 812.

What circumstances are proof of bona fides in receiving lost or stolen bills, &c.] In order to entitle a person who has taken a lost or stolen bill or note for value, to recover upon such note,

or to hold the same against the party losing it, it must appear that he took it *bonâ fide*. The circumstances sufficient to substantiate this *bona fides* must depend upon the nature of each particular case. The following cases, which are arranged in order of time, have been decided on the subject. A bank note for 21*l*. 10*s*. was stolen from the mail on the 11th December, and on the following day came into the possession of the plaintiff for a full and valuable consideration; on its being stopped at the bank, the plaintiff brought trover, and it was held that he was entitled to recover. "Here," said Lord Mansfield, "an innkeeper took the note *bonâ fide* in his business from a person who made the appearance of a gentleman. Here is no pretence or suspicion of collusion with the robber, for this matter was strictly inquired and examined into at the trial, and it is so stated in the case, that he took it for a full and valuable consideration in the usual course of business. Indeed, if there had been any collusion or any circumstances of unfair dealing, the case had been much otherwise. If it had been a note for 1000*l*. it might have been suspicious, but this was a small note for 21*l*. 10*s*. only, and money given in exchange for it." *Miller v. Race*, 1 *Burr*. 452. Vaughan gave a cash note, payable to bearer, to Bicknell who lost it. Four days after the loss, a person brought it to Grant, the plaintiff, who was a tradesman, and after buying 5*l*. worth of tea, gave the note in payment, desiring to have the change. Grant stepped out to make inquiry who Vaughan might be, and on being informed that he was a very good man, and that this was his handwriting, he readily gave the change out of the note. Grant having sued Vaughan on the note, Lord Mansfield left it to the jury to say, whether the plaintiff came to the possession of this note fairly and *bonâ fide*, (which necessarily included his not having notice of its being a lost note); another point was also left to them, and a verdict was found for the defendant. On motion for a new trial, the court of K. B. granted the rule upon both points. And *per Lord Mansfield*, "Bicknell lost the note, and it came *bonâ fide*, and in the course of trade, into the hands of the present plaintiff, who paid a full and fair consideration for it. Bicknell and the plaintiff are both innocent. The law must determine which of them is to stand to the loss, and by law it falls upon Bicknell." *Per Wilmot J.* "The note appears to have been taken by him fairly and *bonâ fide* in the course of trade, and even with the greatest caution. He made inquiry about it, and then gave the change for it, and there is not the least imputation or pretence of suspicion that he had any notice of its being a lost note." *Grant v. Vaughan*, 3 *Burr*. 1516. A bill with blank indorsements had been picked out of the holder's pocket at Manchester races. Being offered in payment to a house at Manchester, who did not know the persons whose names appeared upon it, they sent to inquire about their

credit, and finding them responsible, gave a valuable consideration for it, and sent it to their correspondent at London. He carried it to the drawee for acceptance, who detained it, and said it was stolen, upon which the house at Manchester brought an action against the drawer. For the defendant it was attempted to be shewn, that the plaintiffs knew the bill had been unfairly obtained; but that proof failing the plaintiffs recovered. *Francis v. Mott, cited in Peacock v. Rhodes, Dougl.* 612. 634. *4th ed.* A bill, generally indorsed, was stolen from the holder. The plaintiff, a mercer at Scarborough, received this bill afterwards from a man not known, who called himself William Brown, and by that name indorsed the bill to the plaintiff, of whom he bought cloth and other articles in the way of the plaintiff's trade, and paid him that bill, the value of which the plaintiff gave to the buyer in cloth and other articles, and cash and small bills. The plaintiff did not know the defendants, the drawers of the bill, but had before in his shop received bills drawn by them which were duly paid. The plaintiff declared as indorsee of the payee. Upon a case stating these facts, the court held that the plaintiff was entitled to recover. "The question of *mala fides*," said Lord Mansfield, "was for the consideration of the jury. The circumstances that the buyer and also the drawers were strangers to the plaintiff, and that he took the bill for goods on which he had a profit, were grounds of suspicion very fit for their consideration. But they have considered them, and have found that it was received in the course of trade, and therefore, the case is clear, and within the principle of all those cited, from that of *Miller v. Race* to that determined by me at *Nisi prius*." *Peacock v. Rhodes, Dougl.* 611. 633. *4th ed.* A bill generally indorsed was lost by the holder, and advertised by him immediately on its being lost. The plaintiffs, bankers at Richmond, discounted the bill in the usual course of their business for a person who brought it to their shop, but who was unknown to them; but the bill had been drawn in their neighbourhood, at Newcastle, and they were perfectly acquainted with the handwriting of the several parties to it. On discounting the bill, the party who brought it was desired to put his name on it, and no further inquiry was made by the plaintiffs, who paid him the amount. *Per Lord Kenyon*, "I think the point in this case has been settled by *Miller v. Race*. If there was any fraud in the transaction, or if a *bonâ fide* consideration had not been paid for the bill by the plaintiffs, to be sure they could not recover; but to adopt the principle of the defence to the full extent stated, would be at once to paralyse the circulation of all the paper in the country, and with it all its commerce. The circumstance of the bill having been lost might have been material, if they could bring knowledge of that fact home to the plaintiffs. The plaintiffs might or might not have seen the advertisement, and it would be going great lengths to say, that a banker was bound to make inquiry con-

cerning every bill brought to him to discount; it would apply as well to a bill for 10*l.* as for 10,000*l.* The magnitude of the bill has been pressed as a ground of suspicion by the defendant's counsel. I do not feel it of such importance. A person going to the country, and having occasion to bring a sum of money, might prefer bringing it in that way rather than in money. I therefore see no misconduct imputable to the plaintiffs, but I think they are bound, under the circumstances of the case, to prove the value actually paid." *Lawson v. Weston*, 4 *Esp.* 56. *overruled in Gill v. Cubitt*, 3 *B. & C.* 470, *post.*

In the month of July, 1808, the plaintiff lost a 50*l.* bank note; but no direct evidence of the loss was given. On the 29th August being paid into the bank, it was traced to the defendant, who kept a public house. At first he said he did not recollect how he came by it, then he said he had given change for it about a month before to a stranger, in payment of a glass of brandy and water; but that he could neither write nor read, and that he was accustomed to receive notes of equal amount in the course of his business. *Per Lord Ellenborough*, "I must presume that the defendant, when possessed of this note was a *bonâ fide* holder for a valuable consideration. It lies upon you to impeach his title; you might have thrown so much suspicion on his conduct in the transaction as to have rendered it necessary for him to prove from whom he received the note, and what consideration he gave for it. But I think you have not done so. The suspicious circumstances detailed by the witnesses may be accounted for from the defendant's ignorance." *King v. Milsom*, 2 *Campb.* 5. In *Snow v. Peacock*, 3 *Bingh.* 417, *post*, *p.* 366. *Park J.* said, he thought it impossible to support this decision. The following case, though not relating to a lost or stolen bill, was decided on the same principle which governs the decisions respecting lost bills. Where a trader, after a commission of bankrupt issued against him, wishing to redeem a bill of exchange which he had before remitted to his bankers, to whom he was indebted much beyond that amount, secretly employed an unknown agent, in whose hands he placed for that purpose four other bills of about the same value; and such agent, after endeavouring in vain to prevail on the bankers to take in exchange such four bills for the one, (which application was made as from, and in the names of third persons, though seconded by a letter from the trader to the bankers, received by them about the same time), passed off the four bills in the market and obtained bank notes for the same, with which bank notes he took up the first bill out of the bankers' hands in the usual way; it was held that the assignees of the bankrupt trader could not recover from the bankers the amount of such bank notes, the produce of the four bills, part of the bankrupt's estate, though disposed of by him after his bankruptcy, the bankers having *bonâ fide* for a valuable considera-

and without notice of the true owners, received such bank notes. *Lowndes v. Anderson*, 13 *East*, 130.

In the above cases, the circumstances were such as to shew the *bona fides* of the transaction; in the following such circumstances were wanting. A bank note was fraudulently obtained from the holder; afterwards the plaintiff received it from his correspondents, Hymen and Hendricks of Middleburgh, and, after presenting it at the bank, he wrote to those persons, inquiring how they came by the note, and was informed that they received it from a man dressed in such a way, of whom they knew nothing. The bank refusing to pay, this action was brought. Lord Kenyon told the jury, that, inasmuch as it did not appear that the plaintiff himself had paid a valuable consideration for the note before notice, he should consider him as the agent of Hymen and Hendricks, and with respect to them he was by no means satisfied in his own mind that they had properly accounted for their possession of it; whereupon the plaintiff was nonsuited, and on an application to set aside the nonsuit, the court of King's Bench concurred in Lord Kenyon's opinion. *Solomons v. Bank of England*, 13 *East*, 155. (*n.*) A bank note for 1000*l.* belonging to the plaintiffs was lost on 3d April. On 3d July it was paid into the bank of England by certain bankers, who received it from the agents of the defendant, who gave the following account of it. He said, that on the 24th of June he discounted it for Mr. J. Henry, a slop seller and tavern keeper at Liverpool, and gave him full value for it in bills to the amount of 704*l.* and the remainder in bank notes and cash, allowing him 5 per cent. interest on the bills for the time they had to run, and deducting 1-8th per cent. commission. He made no inquiry from Mr. Henry how he became possessed of the note; he saw it was a good one, and that was enough for him. At the time of this transaction, the plaintiff's agent was suing Henry, at the instance of the defendant and his partner in a brewery concern, for a debt of 12*l.* or 15*l.* for ale, sold by the firm, and Henry had given a cognovit for the amount. The witness stated that Henry had taken the benefit of the insolvent debtor's act, six months previous to the time of the transaction in question, and it appeared from his schedule, delivered on that occasion, that he admitted himself to be the defendant's debtor for spirituous liquors sold and delivered to the amount of 3*l.* 0*s.* 6*d.* The newspapers in which the plaintiffs had advertised the note were in general circulation in Liverpool at that period. The defendant stated, that there was no other person present at the transaction but Henry: he kept no account of the transaction in his books, except of the bills, which were entered in his bill book, and which he produced to the witness. He could not state how the difference between the 704*l.* and the remainder was made up, except that it consisted of bank notes and gold, but of

what description of notes he could not say, as he had no entry of the transaction. He admitted that it had been his custom for some years to enter all such transactions, but as it did not answer, he had discontinued it. On the part of the defendant, it appeared from the evidence of his clerk, that on the 24th of June he was present when the note in question was brought to the defendant by Henry, to have it changed. The defendant had had frequent transactions with Henry in discounting bills for him. Henry was a slopseller, and kept the American tavern, which was frequented by seafaring people. He said he wanted bills of exchange and cash for the note, that he wanted the change for a person named Hughes, then lodging at his house, and that the defendant must not charge more than 1-8th commission. The usual commission charged at Liverpool for changing large notes was one-fourth, and Henry said that the defendant must divide the commission with him. The defendant agreed to take only 1-8th per cent. if Henry would take part of the amount of the note in bills, and the rest in cash, which he consented to do. Whereupon the defendant produced several bills for Henry from his pocket book, to select which he pleased, and he took eight, amounting to 704*l.* upon which he was allowed five per cent. for the time they had respectively to run. The defendant gave him the remainder of the amount in cash and bank notes, deducting 25*s.* for his commission. Witness could not give any precise account of the bank notes which were given to Henry with the bills. They frequently entered the number of 20*l.* notes, and notes of a larger amount. On the same day the note was remitted to defendant's bankers in London. The bills given by the defendant to Henry passed current as cash in Liverpool, in the purchase of merchandize. Two of the bills were dishonored when due, but the defendant afterwards took them up. Henry was a customer of the defendant in discount transactions, and the witness knew of no other dealings between them, except in discounting bills. The defendant's remittances to his bankers in London amounted to 200,000*l.* per annum. Henry was also called as a witness for the defendant, and he stated, that the note had belonged to a Mr. Hughes, who was at the time of the transaction in question lodging at his house, waiting for a vessel to go to America. He had been at his house in the previous month of November, for the same purpose. Hughes told him that he wanted a bank note for 1000*l.* changed: witness said that he could not get so large a note changed without paying a commission of 1-8th, which he agreed to give. Henry then took the note to the defendant, and told him he wanted it changed for Hughes; that some promiscuous bills would do, and the remainder in cash, as Hughes wanted to purchase some goods to take with him to America. The defendant then said "Very well, I'll do it for you," and produced some bills, eight of which witness selected,

amounting to 704*l.* and received the remainder in cash and bank notes, paying 25*s.* commission. The witness had first called at a Mr. Aspinall's, a bill broker, to get the note changed, but that person had not cash enough about him at the time. Between witness's house and the defendant's there were three or four respectable banking-houses. Witness could not give a correct description of the amount of the bank notes he received for the bills. He purchased doubloons for Hughes to the amount of 300*l.* Hughes soon afterwards went on board the vessel, and sailed for America. None of the bills given in exchange for the note were produced in evidence. *Holroyd J.* told the jury, that if they were of opinion that the defendant had received the note fairly and *bonâ fide* in the ordinary course of business, and had given full value for it, he would be entitled to a verdict: but if, on the other hand, he had received it out of the ordinary course of business, and had not in fact given the full value for it, the plaintiff would be entitled to a verdict. The jury having found for the plaintiffs, a new trial was moved for, but the court of K. B. were clearly of opinion, that the case had been properly left to the jury, and they saw no reason to be dissatisfied with the verdict. *Egan v. Threlfall*, 5 *D.* & *R.* 326. (*n.*)

On the 20th August, a bill was stolen from a Birmingham coach. On the following day the drawer advertised the loss in two newspapers. In an action by the plaintiff as indorsee against the acceptors, the following evidence was given to shew the *bona fides* of the transaction. The plaintiff, a bill-broker in London, proved by his nephew, who assisted him in his business, that the bill was brought to his office between the hours of nine and ten on the morning of the 21st of August, by a person having a respectable appearance, and whose features were familiar to the witness, but whose name was unknown to him. He desired that the bill might be discounted for him, but the witness at first declined so to do, because the acceptors were not known to him. The person who brought the bill then said, that a few days before he had brought other bills to the office, and that if inquiry was made it would be found that the parties whose names were on this bill were highly respectable. He then quitted the office and left the bill, and upon inquiry the witness was satisfied with the names of the acceptors. The stranger returned after a lapse of two hours, and indorsed the bill in the name of Chas. Taylor, and received the full value for it, the usual discount and a commission of two shillings being deducted. The witness did not inquire the name of the person who brought the bill, or his address, or whether he brought it on his own account or otherwise, or how he came by the bill. It was the practice in the plaintiff's office not to make any inquiries about the drawer or other parties to a bill, provided the acceptor was good. Upon this evidence

the Lord Chief Justice told the jury, that there were two questions for their consideration; 1st, whether the plaintiff had given value for the bill, of which there could be no doubt; and, 2dly, whether he took it under circumstances which ought to have excited the suspicion of a prudent and careful man. If they thought that he had taken the bill under such circumstances, then, notwithstanding he had given full value for it, they ought to find a verdict for the defendant. Then the Lord Chief Justice, after stating the evidence and commenting upon the practice in the plaintiff's office, of discounting bills for any person whose features were known to him, but whose name and abode were unknown, without asking any questions, asked the jury what they would think if a board were affixed over an office with this notice, "Bills discounted for persons whose features are known, and no questions asked." The jury having found a verdict for the defendants, a rule *nisi* for a new trial was obtained in Easter Term, on the ground that the plaintiff having paid a valuable consideration for the bill, was entitled to recover its value; and, 2dly, that the case had been put too strongly to the jury, when it was compared to the case of a public notice given by a broker, that he would discount all bills without asking questions. After argument the rule for a new trial was discharged. And *per Abbott C. J.* "If we thought that upon reconsideration of the evidence, another jury ought to come to a different conclusion, we would send the case down to another trial. But being of opinion, that the proper conclusion has been drawn from the evidence, we think that this rule ought to be discharged. I agree with the counsel for the plaintiff, that this case is hardly distinguishable from *Lawson v. Weston*, (*supra*). If there is any distinction, it is that in this case, the plaintiff's clerk said it was not usual with the plaintiff to ask any questions, or to make any inquiry, if bills were brought to them by persons whose features they supposed themselves to be acquainted with, provided they were satisfied with the names of the acceptors. I cannot help thinking, that if Lord Kenyon had anticipated the consequences which have followed from the rule laid down by him in *Lawson v. Weston*, he would have paused before he pronounced that decision. Since the decision of that case, the practice of robbing stage coaches and other conveyances, of securities of this kind, has been very considerable. I cannot forbear thinking that that practice has received encouragement by the rule laid down in *Lawson v. Weston*, by which a facility has been given to the disposal of stolen property of this description. I should be sorry if I were to say anything, sitting in the seat of judgment, that either might have the effect, or reasonably be supposed to have the effect, of impeding the commerce of the country, by preventing the due and easy circulation of paper. But I am decidedly of opinion, that no injury will be done to the interests of commerce, by a decision that

the plaintiff cannot recover in this action. It appears to me to be for the interests of commerce, that no person should take a security of this kind from another without using reasonable caution. If he take such security from a person whom he knows, and whom he can find out, no complaint can be made of him. In that case, he has done all that any person could do. But if it is to be laid down as the law of the land, that a person may take a security of this kind, from a man of whom he knows nothing, and of whom he makes no inquiry at all, it appears to me, that such a decision would be more injurious to commerce, than convenient for it, by reason of the encouragement it would afford to the purloining, stealing, and defrauding persons of securities of this sort. The interest of commerce requires that *bona fide* and real holders of bills, known to be such by those with whom they are dealing, should have no difficulties thrown in their way in parting with them. But it is not for the interest of commerce that any individual should be enabled to dispose of bills or notes, without being subject to inquiry. I think the sooner it is known that the case of *Lawson v. Weston* is doubted, at least by this court, the better. I wish doubts had been cast on that case at an earlier time. If that had been done, this plaintiff probably would not have suffered. Coming to the facts of this case, they are these, that the young man, acting according to the course which the plaintiff, when he was present, followed, gave money for this bill, to a person of whom, though he supposed he knew him, he really knew nothing. This is done at a very early hour, between nine and ten in the morning on the day after the bill was lost. I cannot help saying, that that practice in the plaintiff's business of a bill-broker, is a practice inconvenient, for the reasons I have already given. It seems to me, that it is a great encouragement to fraud, and it is the duty of the court to lay down such rules as will tend to prevent fraud and robbery, and not give encouragement to them. For these reasons, notwithstanding all the unfeigned reverence I feel for every thing that fell from Lord Kenyon, by whom *Lawson v. Weston* was decided, I cannot think the view taken by that Learned Lord at that time, was a correct one, and that being so, I am of opinion that this rule ought to be discharged." *Gill v. Cubit*, 3 *B. & C.* 466. 5 *D. & R.* 326. *S. C.*

On the 16th November, the plaintiff lost a check upon Pole & Co. bankers, for 50*l.* Between four and five o'clock on the evening of the 22nd, a woman of respectable appearance, came to the shop of the defendants, wholesale Linen Drapers and Haberdashers, and purchased a silk shawl and scarf, the price of which was 6*l.* 10*s.*, in payment of which she tendered the check in question, dated the 16th November; upon being desired to write her name and address upon it, she said she was an indifferent writer, and at her request, the shopman wrote it

for her. The defendants then gave her the amount of the check, after deducting the amount of the goods purchased. The defendants having received the money for the check from the bankers, were sued for money had and received. The Chief Justice directed the jury to find a verdict for the plaintiff, if they thought that the defendants had taken the check under circumstances which ought to have excited the suspicion of a prudent man, observing at the same time that there was no evidence to show that the defendants in taking the note had acted fraudulently; but the question was, whether they had not acted negligently. The jury found a verdict for the plaintiff, and the court of King's Bench refused to grant a new trial. *Down v. Halling*, 4 *B. & C.* 330. 6 *D. & R.* 455. 2 *C. & P.* 11. *S.C. See Lee v. Newsam, Dow. & Ry. N. P. C.* 50, where under nearly similar circumstances the jury found the other way. Trover for a bank note. In September, 1824, the plaintiffs were robbed of a bank note for 500*l.*; handbills were published, and the loss was advertised in the *Hue and Cry*. On 2nd April 1825, the note was presented at the Bank of England, and stopped. It was traced to the defendants, who kept a bank at Bourne, a small town in Lincolnshire. The note had been presented at the bank at Bourne, on the 13th April, by a respectable looking man, who two hours before, had arrived in the London Mail. The defendant's clerk, without asking any questions of this person, of whom he knew nothing, or learning any thing more about him than that he said his name was Edwards; after refusing to give him Bank of England notes, gave him 500*l.* worth of the defendant's notes in exchange for the note in question, which was that day forwarded to the defendant's correspondent in London, and placed to their credit. The clerk said it was the usual course of the defendant's business to exchange notes in that way; but in the course of eleven years, he had never changed a 500*l.* a 300*l.* or a 200*l.* note. He had never seen the *Hue and Cry*, had no suspicion that the note had been stolen, and stated that there were at that time many fairs in the neighbourhood, at which it would be more convenient to negotiate the defendant's notes than a 500*l.* Bank of England note. Evidence was received of the caution observed at the Bank of England, and London Bankers' in the exchange of large notes, and the Chief Justice left it to the jury to determine, as well whether the plaintiff had acted with due diligence in circulating intelligence of the robbery, as whether the defendants had exercised sufficient caution, and had observed the usual course of business in exchanging the notes. A rule *nisi* for a new trial having been obtained, on the ground that the Chief Justice ought to have left the case to the jury as a question purely of *bona fides* or *mala fides*, it was on argument discharged. And *per Best C. J.* "One who has lost a note payable to bearer, ought immediately to give notice

of his loss in such a manner, as is most likely to prevent innocent persons from taking it. If after such notice given, a person takes that note from a stranger without making such inquires as prudence would suggest to any one acquainted with the business of the world, the owner of the note may recover the value of it from him. Although the loss of the note has not been duly advertised, yet if it has been received under circumstances that induce a belief, that the receiver knew that the holder had become possessed of it dishonestly, the true owner is entitled to recover its value from the receiver. The negligence of the owner is no excuse for the dishonesty of the receiver. But the negligence of the one may be an excuse for the negligence of the other, and might authorise him to defend himself on the maxim, *potior est conditio possidentis.*" *Snow v. Peacock*, 3 *Bingh.* 406.

The doctrine that it is incumbent on the loser to give proper notice of his loss, was inforced in the following case. Trover for bills of exchange. The plaintiff on the 23rd December, 1825, was robbed of his pocket book, containing a bill of exchange at thirty days' sight, indorsed by the payee. On the 26th December, the plaintiff advertised the loss of the pocket book, but said nothing of the lost bill, it being stated that the contents of the pocket book were of no use to any but the owner. The defendants were bankers at Maidstone. The bill was presented to their clerk on the 29th of December, by two young men, who were strangers to him. One of them said he was the son of the indorser. The amount of the bill was thereupon paid in notes of the defendants' bank. The Chief Justice left it to the jury to consider, whether the plaintiff had used due diligence in apprising the public of his loss, and whether the defendants had acted with good faith and sufficient caution in the receipt of the bill. The jury having found a verdict for the defendants, a new trial was moved for, on the ground of a misdirection, but the court refused it, saying, that the plaintiff was bound to give notice of his loss as extensively as possible, that so far from having done so in the present instance, he had rather misled than assisted parties to whom the stolen notes might be offered, by stating that the contents of the pocket-book were of no use to any but the owner. *Beckwith v. Corrall*, 3 *Bingh.* 444. 2 *C. & P.* 261. *S. C.*

Trover for three bank notes of 200*l.*, 100*l.*, and 50*l.* The plaintiffs were robbed of the notes on 7th September, 1824. On the following day handbills were printed stating the number, date and amount of the notes, but the date of the 200*l.* was misdescribed. On the eve of the Doncaster races in September, one of the handbills was left at the defendants' bank at Doncaster, and the plaintiffs wrote to the defendants on the subject in the course of the same month. The defendants had stated that they received the notes in question, and had given their own notes in change for them during the Doncaster race week

of 1825, and that it being the race week they did not know of whom they received them, nor did they ask the person his name. *Per Abbott, C. J.* "If a person take a bank of England note under circumstances which might awaken suspicion in the mind of a reasonable man acquainted with business, and which ought to cause him to make inquiries, and he forbear to do so, he cannot hold the proceeds of such note from the person who has lost it. On the approach of the Doncaster races of 1824, notice of the robbery was sent to the defendants on a supposition that it was likely that the notes would be attempted to be passed there. Now it is contended as matter of law, that notice once given is notice for all time. I do not go all that way, and I think it is for you to consider whether as men of business the defendants would fairly advert to a notice of this kind given a year before, or whether they might not suppose, as they heard nothing more about the matter, that the notes had been got back. As to the mistake of the date of one of the notes, I think that makes no difference unless the defendants were misled by it. It is proved for the defendants that they do not ask who brings the notes, nor enter numbers nor dates. But the question for you to consider is, whether the defendants conducted their business in the race week in such a manner as to hold out temptation to persons unlawfully possessed of property to pass it to them, the defendants knowing that at such a time all sorts of persons, some being of the highest, and some of the most depraved classes, were then at that place. If you think that was so, you ought to find for the plaintiffs; but if you think that there was nothing incorrect in the manner in which the defendant's bank was carried on, and that the defendants took the notes in the regular and proper course of business, you will find a verdict in their favor; the jury found for the plaintiff." *Snow v. Leatham*, 2 *C. & P.* 316. In trover for a 30*l.* Bank of England note, it appeared that it had been stolen from the plaintiffs in September 1824. The plaintiffs having given due notice of the loss, traced the note in October, 1825, to the hands of the defendant, a stable keeper and horse dealer at Oxford. Upon being applied to on behalf of the plaintiffs, he said, according to one witness, "he had received it from a stranger at Doncaster races in payment for bets won, or in change out of payment for bets lost on some of the races;" according to another person present at the same declaration, "from his bankers at Oxford, or at Doncaster." The defendant did not call the Oxford bankers. The jury were directed to find for the defendant, if they believed the last witness. They found however for the plaintiffs, and the court granted a new trial. *Snow v. Saddler*, 3 *Bingh.* 610. See also *Slater v. West*, 3 *C. & P.* 325.

From the above cases it will be seen that when the title of a party, who has received a lost or stolen bill or note, comes in

question between him and the true owner, there are three points to be decided; 1. Whether he took it *bonâ fide*, that is, whether he took it under such circumstances as may induce a jury to believe that he received it without any notice of the loss or the larceny. It seems that the question whether the bill or note was taken in the usual course of trade is parcel of the question of *bona fides*, for if it was taken out of the usual course of trade it is evidence from which the jury may presume that the party taking was aware of the badness of the title. 2. The second point is, whether the party taking the bill or note used due caution and diligence in making inquiries respecting the title, for it is possible that he may have acted quite *bonâ fide*, and yet have been guilty of great want of caution and diligence, as in several of the cases above cited. The degree of caution and diligence requisite, must always depend on the particular circumstances of the case; but it may be laid down as a general rule, that a person cannot safely take a bill or note from a stranger without inquiring into the truth of the representations made by him, even though the party taking the bill or note be acquainted with the handwriting of the parties to it. The earlier cases do not seem to carry the rule to this extent, but it appears to be firmly established by the later decisions. 3. The third point (which has only arisen in the cases determined in the Common Pleas), is, whether the loser of the bill or note has used sufficient diligence in making known his loss.

Between what parties it is a good defence, that the bill has been lost or stolen.] It will sufficiently appear from what has been already said in the present chapter, in what cases a person who is sued upon a bill or note which has been lost or stolen, may avail himself of that circumstance as a defence. The general rule on this subject has been thus laid down in a late case. "It may be taken as a general rule that indorsees of bills of exchange or promissory notes are entitled to recover the sums for which they are respectively made payable from the persons liable upon the face of the bill or note, notwithstanding the rights of third persons, unless the party taking the bill was cognizant of those rights when he took it. Thus, where a bill of exchange or promissory note has been lost or stolen, a person deriving his title through another who had no right to indorse, may transfer a right to an innocent indorsee." *Per Holroyd, J. Drayton v. Dale*, 2 *B. & C.* 300. To this it must be added, that in order to render the title of the party taking such a bill perfect, it must appear that he took it under circumstances which would not have excited the suspicion of a prudent man.

Conduct to be pursued in case of loss or robbery of bills.] On the loss of a bill or note, the party losing it should immediately

give notice of the loss to all the antecedent parties and to the drawee, in case the bill has not been accepted. He should also give public notice of his loss in the due and usual manner, either by circulating hand-bills or by inserting advertisements of the loss in the newspapers, for though it may be impossible to prove that the party taking the note had received these notices, yet it will be an answer to the objection of want of due diligence in the loser. The loser should also, on the bill becoming due, apply to the acceptor for payment, and, if dishonored, give notice of such dishonor to the other parties, for even where a bill has been destroyed, want of such notice will discharge the drawer. *Thackray v. Blackett*, 3 *Campb.* 164.

Remedy against the postmaster or his servants for lost or stolen bills, &c.] There is no remedy at law against the postmaster-general, for the loss of bills or notes lost or stolen in consequence of the misconduct or negligence of the servants of the post office. *Lane v. Cotton*, 1 *Ld. Raym.* 646. 1 *Salk.* 17. *Carth.* 487. *S. C. Whitfeld v. Ld. Despencer, Cowper*, 754. But as to an action on the case lying against the party really offending, there can be no doubt of it; for, whoever does an act by which another person receives an injury, is liable to an action for the injury sustained. If the man who receives a penny to carry the letters to the post-office, loses any of them, he is answerable; so is the sorter in the business of his department; so is the postmaster for any fault of his own. *Per Ld. Mansfield, Whitfeld v. Ld. Despencer, Coup.* 765. So it has been held that an action on the case will lie against a deputy postmaster, for non-delivery of letters gratis in a country post town. *Rowning v. Goodchild*, 2 *W. Bl.* 906. 3 *Wils.* 443. *S. C.*

Who shall bear the loss in case of bills, &c. sent by post and lost.] Where a debtor directed his creditor to remit him by post a bill for the sum owing, and certain monies collected by him from other customers, and a bill was accordingly put into the post-office, but never reached the creditor, Lord Kenyon held, that the creditor must bear the loss. Had no directions, said his Lordship, been given about the mode of remittance, still, this being done in the usual manner of transacting business of this nature, I should have held the defendant clearly discharged from the money he had received as agent. It was so determined in the court of Chancery forty years since, and as the plaintiff in this case directed the defendant to remit the whole money in this way, it was remitted at the peril of the plaintiff. *Warwicke v. Noakes, Peake*, 67, *a.* But where the plaintiffs directed the defendants to remit them by post, and the

defendants delivered a letter containing bills to the bellman in the street, which never arrived, Lord Kenyon ruled that the defendants had not used due caution. They ought to have delivered the letter at the General Post Office in Lombard street, or at one of the houses authorised by that office to receive letters with money (*see Parker v. Gordon*, 7 *East*, 385.), and not to a bell-man in the street. *Hawkins v. Rutt*, *Peake*, 186.

CHAPTER XVI.

OF THE FORGERY OF BILLS AND NOTES.

Enactments.
Nature of the instrument.
Alteration—forgery.
By assuming a fictitious name.
By assuming a false character.
Uttering forged bills, &c.
Indictment.
Evidence.

Enactments.] The following are the principal enactments against the forging of bills and notes.

By 2 Geo. 2. c. 25. s. 1. (made perpetual by 9 Geo. 2. c. 18.) if any person after 29th June 1729, shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited; or willingly act or assist in the false making, forging or counterfeiting, amongst other things, any bill of exchange or promissory note for payment of money, or any indorsement or assignment of any bill of exchange or promissory note for payment of money, with intention to defraud any person whatsoever, or shall utter or publish as true any false, forged or counterfeit bill of exchange or promissory note for payment of money, or any indorsement or assignment of any bill of exchange or promissory note for payment of money, with intention to defraud any person, knowing the same to be false, forged or counterfeited, then every such person shall be deemed guilty of felony without benefit of clergy. By 31 G. 2. c. 22. s. 78. the 2 G. 2. is extended to cases of forgery, &c. with intent to defraud any corporation whatsoever.

By 7 Geo. 2. c. 22. which recites, that by 2 Geo. 2. c. 25. no punishment is inflicted upon any person who shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or willingly act or assist in the false making, altering, forging, or counterfeiting any acceptance of any bill of exchange, or who shall knowingly utter or publish the same as true: it is therefore enacted, that if any person, after the 24th day of June, 1734, shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, or counterfeited, or willingly act or assist in the false making, altering, forging, or counterfeiting any acceptance of any bill of exchange with intention to defraud any person whatsoever; or shall utter or publish as true, any false, altered, forged, or counterfeited acceptance of any bill of exchange, with intention to defraud any person, knowing the same to be false, altered, forged, or counterfeited; then every person shall be deemed guilty of felony, without benefit of clergy. By 18 Geo. 3. c. 18. the stat. 7 Geo. 2. c. 22. is extended to cases of forgery, &c. with intent to defraud any corporation whatsoever.

By 45 Geo. 3. c. 89. s. 1. which recites 2 Geo. 2. c. 25. and certain other acts, and states that certain provisions had been made and enacted for the preventing and punishing the forgery of bank notes, and other notes, bills and instruments, in those acts respectively mentioned; and that it was expedient that such provisions should extend and be in force in every part of Great Britain, with such alterations and amendments therein as were thereby made — it is enacted that if any person or persons shall, from and after the passing of this act, falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, counterfeited or altered, or willingly act or assist in the false making, forging, counterfeiting or altering (among other instruments) any bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment of money, or acceptance of any bill of exchange, with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; or shall offer, dispose of, or put away, any false, forged, counterfeited, or altered bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange, promissory note for payment of money, or acceptance of any bill of exchange, with intention to defraud any person or persons, body or bodies politic or corporate, knowing the same to be false, forged, counterfeited, or altered, then every person or persons so offending shall be deemed guilty of felony, without benefit of clergy.

Nature of the instrument.] Forgery has been defined the

making a false instrument with intent to deceive; *Per Buller J. Coogan's case, O. B.* 1787, 1 *Leach*, 449. 2 *East P. C.* 948; but it is not necessary that the forged instrument should exactly resemble the real one. *See Collicot's case*, 2 *Leach*, 1048. Therefore, where a forged bank note was in this form, "I promise to pay to Mr. J. C. or bearer on demand, the sum of Fifty," omitting the word "pounds;" but in the margin was the word "£Fifty;" the prisoner being convicted of this forgery, a majority of the twelve judges held the conviction right, and that it was a matter to be left to the jury whether the instrument purported to be a note for fifty *pounds* or any other sum. *Ibid.* But where the false instrument does not carry on the face of it the semblance of that for which it is counterfeited, or where it is illegal in its very frame, the offence will not be forgery. 2 *Russell*, 345. 2*d. ed.* Thus, where a man was indicted for forging an instrument which in one count was treated as a bank note, and in another as a promissory note, in the following form: "*I promise to pay to J. W. Esq. or bearer, ten pounds—London, March 4th*, 1776. *For self and company of my bank in England*, 10*l. Entered, John Jones*—Lord Mansfield held that this offence was not forgery. *R. v. Jones*, 1 *Dougl.* 390, 4*th ed. R. v. Pateman, Russ. & Ry.* 455. So, where the prisoner was convicted of a misdemeanor as for an offence at common law, for disposing of a forged promissory note, which appeared in evidence to be as follows: "*Blackburn bank—I promise to take this as thirty shillings on demand, in part of a two pound note, value received for C. B. & Co. R. C.*" It was objected that this instrument could not, in any legal sense, be denominated a promissory note, and the judges held the conviction wrong. *R. v. Burke, Russ. & Ry.* 496. Again, where the prisoner was convicted of knowingly uttering as true, a forged acceptance of a bill of exchange of the following tenor: "*Seven days after date, please to pay to Mr. J. M. or his order, the sum of* 3*l.* 3*s. and place the same to account of W. S. To C. P. Esq. Accepted, C. P.*;" the judges were of opinion that the conviction was wrong, on the ground that if the bill in question had been a genuine instrument, it would have been absolutely void, and nothing would have made it good; and that by the statute 17 G. 3. c. 30, *ante*, *p.* 5; such an instrument was no bill, and had not the appearance or semblance of one. *Moffat's case*, 1 *Leach*, 431. 2 *East, P. C.* 954. So, where the prisoner drew a bill upon the treasurer of the navy, payable to or order, and signed it in the name of a navy surgeon, it was held that to constitute an order for payment of money, there must be a payee, and that a direction to pay to or order was not sufficient. *R. v. Richards, Russ. & Ry.* 193. *R. v. Randall, Russ. & Ry.* 195, *ante*, *p.* 22. So a note promising to pay "in cash or bank of England notes," is not a promissory note within the statutes

against forgery. *R. v. Wilcox, Bayley*, 6. 2 *Russ.* 456, 2*d ed.* But in order to constitute forgery of a promissory note, it is not necessary that it should contain the words "or order," rendering it negotiable. *R. v. Box, Russ. & Ry.* 300. 6 *Taunt.* 325. 2 *Russ.* 460. 2*d ed.* The forging a bill, payable to the prisoner's own order, and uttering it without indorsement, is a complete offence. *R. v. Birkett, Russ. & Ry. C. C. R.* 86. *Bayley*, 430. 2 *Russ.* 460.

In order to constitute forgery, it is not necessary that the instrument should be stamped. The stamp acts have no relation to the question of forgery, and supposing the instrument forged to be such on the face of it as would be valid, provided it had a proper stamp, the offence is complete. *Teague's case*, 2 *East, P. C.* 979. *Hawkenwood's case, Id.* 955. *Lee's case*, 1 *Leach*, 258. (*n.*) *Merton's case*, 2 *East, P. C.* 955.

Alteration, forgery.] Not only the falsification and false making of the whole of a written instrument, but a fraudulent insertion, alteration, or erasure, even of a letter in any material part of a true instrument, whereby a new operation is given to it, will amount to forgery, and this, although it be afterwards executed by another person ignorant of the deceit. 2 *East, P. C.* 855. 2 *Russell*, 318. 2*d ed.* Thus, where the prisoner was charged with, and convicted of, making, forging, and counterfeiting a bill of exchange, and it appeared that he had altered a true bill, by changing the figures 10*l.* to 50*l.* and also the letters in the body of the bill, it was held by the judges that the prisoner was properly convicted, though the statute 7 Geo. 2. c. 22. on which the indictment was framed, contains the word *alter* as well as *forge*. *Teague's case*, 2 *East, P. C.* 979. *Russ. & Ry.* 33. *R. v. Post, Russ. & Ry.* 101. So discharging one indorsement and inserting another, is *altering* an indorsement. *R. v. Birkett, Russ & Ry.* 251. *Bayley*, 430. An indictment stated that a bill was drawn for 8*l.*, that persons unknown feloniously did alter it, by falsely forging and adding a cipher to the 8*l.* and a *y* to the eight; that the prisoner had in his possession the said false, forged, altered, and counterfeited bill, and that he feloniously did utter as a true bill the said false, forged, altered, and counterfeited bill, with intent, &c. It was moved in arrest of judgment, on the ground that the forgery was stated to be by persons unknown, and that the statement should have been that they feloniously *forged*, not that they feloniously *altered*, the statute 2 Geo. 2. making it capital to *forge*, but saying nothing as to *altering*; but it was answered that *altering* was *forging*, and the judges were unanimous that the conviction was right. *R. v. Elsworth, Bayley*, 430. So where a note payable at a London banker's, who failed, was altered by pasting a slip of paper containing the name of another London banker, over the name of the former,

it was held by the judges that this was a false making. *R. v. Treble*, 2 *Taunt*, 328. 2 *Leach*, 1040. *Russ. & Ry.* 164.

By assuming a fictitious name.] A signature in a fictitious name will be a forgery, if the name was assumed with a view to the fraud. Thus, where the prisoner was convicted of uttering a forged order for the payment of money, signed "Rt. Vennest," there being no such person as Rt. Vennest, it was held by the judges that this was an order within the statute, and that it was forgery. *Lockett's case*, 1 *Leach*, 94. *East*, *P. C.* 940. So where the prisoner, Edward Taft, was convicted of forging an indorsement on a lost bill of exchange, and it appeared that he had indorsed it in the name of *John Williams*, he was held rightly convicted, for although the fictitious signature was not necessary for the prisoner's obtaining the money, and his intent in writing a false name was, probably, only to conceal the hands through which the bill had passed, yet it was a fraud, both on the owner of the bill, and on the person who discounted it, as the one lost the chance of tracing his property, and the other lost the benefit of a real indorser, if by accident the prior indorser should have failed. *Taft's case*, 1 *Leach*, 172. *East*, *P. C.* 959. So where the prisoner was convicted of forging an order for payment of money, and it appeared that he had bought goods from the prosecutor, and paid for them with a draft signed in the fictitious name of "H. Turner," although the prosecutor had sworn that he gave credit to the prisoner, and not to the draft, it was held that the prisoner was rightly convicted. The judges said that it was a false instrument, not drawn by any such person as it purported to be, and that the using a fictitious name was only for the purpose of deceiving. *Sheppard's case*, 1 *Leach*, 226. 2 *East*, *P. C.* 967. The prisoner, Samuel Whiley, was convicted of forging a bill of exchange, drawn in the name of *Samuel Milward*, payable to the drawer's order. It appeared that the prosecutor received the bill from the prisoner in payment for goods on old Christmas eve; that the prisoner on the 20th December previous, had taken a house in his own name, but that on the 29th of that month, he had ordered a brass plate to be engraved with the name of *Milward*; the jury found that the prisoner had assumed the name of *Milward* in the purchase of goods, and giving the bill, in order to defraud the prosecutor. The judges held the conviction right. *Whiley's case*, *Russ. & Ry.* 90. *Bayley*, 434. The prisoner, John Francis, was convicted of forging an order for the payment of money, signed *Jas. Cooke, jun.* On the 15th of August the prisoner had taken lodgings under the name of *Cooke*, and on the 9th of September following he wrote the forged draft; the judges held the conviction right, and were of opinion, that if the name was assumed for the pur-

pose of fraud, and of avoiding detection, it was as much a forgery as if the name assumed were that of any other person of known credit, though the case would have been different if the party had habitually used, and become known by, another name than his own. *Francis's case*, 2 *Russ.* 336. 2*d ed. Russ. & Ry.* 209. Thus, where it did not sufficiently appear that the prisoner had not gone by the false name before the time of accepting the bill for which he was indicted, or that he had assumed the name for that purpose, a majority of the judges thought the conviction wrong. *Bontien's case, Russ. & Ry.* 263. Where in these cases proof is given of the prisoner's real name, and no proof of any change of name until the time of the fraud committed, it is incumbent on the prisoner to show that he had before assumed the false name on other occasions and for other purposes. *Peacock's case, Russ. & Ry.* 283. Making a mark, and suffering the assumed name to be written against the mark, is forging the name. *R. v. Dunn, Bayley*, 434. 1 *Leach*, 57. 2 *East*, 962.

By assuming a false character.] If a man assume to be another person of the same name, and in such assumed character indorse a bill or note, payable to such other person, it is a forgery. *Mead v. Young*, 4 *T. R.* 28. *ante, p.* 23. Where a person, whose name was Thomas Brown, was indicted for forging a promissory note, signed "Thomas Brown," and it appeared that he had uttered the note as a note of Captain Brown, a fictitious person, and the prisoner was convicted; the judges held the conviction right, and that the circumstance of the forged name being the same as his own made no difference. *R. v. Parkes and Brown*, 3 *Leach*, 775. 2 *East, P. C.* 963. 2 *Russell*, 321. 2*d. edit.* But, where a person represents himself falsely to be the indorser of a bill, it is not forgery if there be such a person as the indorser, and the indorsement is his handwriting. *Hevey's case*, 1 *Leach*, 229. 2 *East, P. C.* 256. 2 *Russell*, 324. 2*d. edit.* And the adopting a false description and addition, where a false name is not assumed, is not forgery. Thus, where the prisoner drew a bill, and directed it, "To Mr. Thomas Bowden, Baize Manufacturer, Romford, Essex," which bill was accepted by one Thomas Bowden, "payable when due at No. 40, Castle Street, Holborn, London," and it appeared that there was no Thomas Bowden residing at Romford, or at No. 40, Castle Street; on a case reserved for the opinion of the judges, whether, assuming the acceptance to be the handwriting of Bowden, the prisoner, by the giving on the face of the bill a false description of Bowden, and uttering it after acceptance by Bowden, with this false description, with intent to defraud, was guilty within the indictment; a majority of the judges were of opinion, that adopting a false description and addition, where a false name

was not assumed, and where there was no person answering the description or addition, was not a forgery. *Webb's case, Russ. & Ry.* 405. A bill was addressed to "*Messrs. Williams & Co. Bankers, Birchin Lane, London,*" but it was doubtful whether the figure 3 between the word "bankers," and "Birchin" was part of the original address. The prisoner was asked at the time of drawing the bill, whether the acceptors were *Williams, Birch, & Co.* and his answers imported that they were. Williams, Birch, & Co. lived at No. 20, Birchin Lane, and it was not their acceptance. There were no bankers in London using the style of Williams & Co. but those at No. 3, Birchin Lane; the name "Williams & Co." was on the door, and some bills addressed to Messrs. Williams & Co. bankers, *Swansea*, had been accepted payable, and paid at No. 3. There was no evidence as to the person who lived at No. 3, but another bill, of the same tenor as that in question, drawn by the prisoner, had been accepted there. Under these circumstances it was held, that the prisoner had been improperly convicted of uttering a forged acceptance, knowing it to be forged. *Watts' case, Russ. & Ry.* 436. 2 *Russ.* 325. 2*d. edit.*

Uttering forged bills, &c.] In order to constitute an *uttering*, the instrument must, it seems, be parted with, or tendered, or offered, or used in some way to get money or credit upon it. *Shukard's case, Russ. & Ry.* 202. Therefore, where the prisoner, in order to persuade an innkeeper that he was a man of substance, pulled out a pocket book and shewed two forged notes, and requested the innkeeper to take charge of them, as he did not like to carry so much property about him, this was held not to be an uttering under stat. 13 Geo. 3. c. 79. *Ibid.* Uttering under a false pretence that the instrument had been given in change by the person to whom it is uttered, in order to obtain from him a good note in lieu thereof, would probably be deemed an uttering. *Bayley*, 438. The offence of disposing or putting away, under 45 Geo. 3. c. 39. is complete, though the prosecutor, for the purpose of detection, causes the application to the prisoner to be made to sell the notes, who sells them as forged notes to a supposed dealer in such notes; for if the prisoner puts them off with an intent to defraud, the intent is the essence of the crime, which exists in the mind, although, from circumstances which the prisoner is not apprised of, the prosecutor cannot be defrauded by his act. *Holden's case, Russ. & Ry. C. C. R.* 154. The prisoner was convicted of having *disposed* and *put away* a forged bank note, and it appeared that he had delivered it to another person for the purpose of uttering it, who knowingly uttered it. A majority of the judges were of opinion, that the prisoner was properly convicted. *Palmer's case, Russ. & Ry.* 72. 1

N. R. 96. 2 *Russell*, 405. 2*d. edit. S. C. See also R. v. Morris, Russ. & Ry.* 270.

Indictment.] The instrument alleged to be forged, must be set forth in words and figures; *Mason's case*, 2 *East, P. C.* 975. 2 *Russell*, 359, 2*d Ed*; and the indictment must state what the instrument is, in respect of which the forgery was committed. *R. v. Willcox, Russ. & Ry.* 50. The instrument is usually alleged to be "to the tenor following," or, "in the words and figures following," but "as follows" is sufficient. *Powell's case*, 2 *W. Bl.* 787. A mere literal variance will not vitiate, as "value received," for "value *reiceved*," *Hart's case*, 1 *Leach*, 145. 2 *East, P. C.* 977. So "Messrs. Masterman & Co." for "Mes^{s}. Masterman & Co.. *Oldfield's case*, 2 *Russ.* 360. 2*d. Ed.* The word *purport* imports what appears on the face of the instrument. 2 *Russ.* 363. 2*d Ed.* Therefore where the indictment charged that the defendants, being possessed of a bill of exchange, *purporting* to be directed to one John *King*, by the name and description of John *Ring*, forged the acceptance of the said John King, it was held bad on the ground that Ring could not purport to be King. *Reading's case*, 2 *Leach*, 590. 2 *East, P. C.* 981. So where an indictment for forging a bill of exchange, directed to Ransom, Moreland and Hammersley, stated that the bill *purported* to be directed to "George Lord Kinnaird, William Moreland, and Thomas Hammersley," by the name and description of "Ransom Moreland, and Hammersley," it was held bad, for the *purport* signifying that alone which appears on the face of the instrument, this averment was not true. *Gilchrist's case*, 2 *Leach*, 657. 2 *East, P.C.* 982. 2 *Russell*, 365. 2*d. Ed. Edsall's case*, 2 *East, P. C.* 984. *And see Reeves's case*, 2 *East, P. C.* 984. 2 *Leach*, 808, 814. But an allegation, that a forged order was drawn on "Messrs. Drummond and Company, Charing Cross," by the name of "Mr Drummond, Charing Cross," is good. *Lovell's case*, 1 *Leach*, 248. 2 *East, P. C.* 990. In case of a forged signature, it must not be averred that he whose signature it purports to be, signed it, which is inconsistent with the charge of forgery. *Carter's case*, 2 *East, P. C.* 985. 2 *Russ.* 361. 2*d Ed.* It is not necessary to allege in the indictment, the manner in which the party was to have been defrauded. *Powell's case*, 1 *Leach*, 77. *East, P. C.* 989. It need not appear that the party to be defrauded was a party to the bill, or that the bill was uttered or tendered to him, for that is matter of evidence. *Elworth's case*, 2 *East, P. C.* 989.

Evidence.] Where the prisoner is indicted for forgery, by subscribing a fictitious name, some evidence must be given on the part of the prosecution that it is not the party's real name. *Bayley*, 447. But where the party's real name is proved, it lies

upon him to shew that the name signed was not assumed for a fraudulent purpose. *Ante, p.* 376. Where the name forged is that of an existing person, evidence must be given to show that the person mentioned in the indictment and in the bill are the same. *Parr's case,* 1 *Leach,* 434. 2 *East, P. C.* 997. *Downes's case,* 2 *East, P. C.* 997. 2 *Russell,* 382. 2*d ed.* Upon an indictment for uttering forged notes, evidence that the prisoner has uttered other forged notes may be given, for the purpose of shewing his knowledge of the forgery. *Wylie's case,* 1 *N. R.* 92. *Hough's case, Russ. and Ry.* 120. But such notes must be produced, and proved to be forgeries. *Millard's case, Russ. and Ry.* 245. The admissibilty of proof that the prisoner had uttered other forged bills or notes of a different kind is questionable. *Bayley,* 450. *See Russ. and Ry.* 247.

Formerly the party whose name was forged could not be a witness on a prosecution for a forgery. See the cases collected, *Bayley,* 450. 2 *Russell,* 378. 2*d ed.* But now by 9 Geo. 4. c. 32. s. 2. it is enacted, that on any prosecution by indictment or information, either at common law, or by virtue of any statute against any person for forging any deed, writing, instrument, or other matter whatsoever, or for uttering or disposing of any deed, writing, instrument, or other matter whatsoever, knowing the same to be forged; or for being accessary before or after the fact to any such offence, if the same be a felony; or for aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor; no person shall be deemed to be an incompetent witness, in support of any such prosecution, by reason of any interest which such person may have, or be supposed to have in respect of such deed, writing, instrument, or other matter.

NOTES.

Note 1. *page* 1.—The order to the drawee is not as it seems revoked by the death of the drawer. Abbot, the master of a vessel at London, bound for Boston, and having on board goods consigned to Perkins; drew a bill in favor of one of his (Abbot's) creditors upon Perkins for the amount of freight to be paid by him. Abbot died, and his estate was insolvent, and after his death, which was known to Perkins, he accepted and paid the bill. Abbot's administrator then sued Perkins for the amount of freight, but the court held that the draft was an assignment of the money that might become due for the freight, and that Abbot's death was not a revocation of the request on the drawee to accept. *Cutts v. Perkins*, 12 *Mass. Rep.* 206. *Bayley*, 5. *American Ed.* *See* 2 *Ves. J.* 115.

Note 2. *page* 2.—The modern decisions confirm the doctrine of Lord Mansfield, that the acceptor of a bill is the *original debtor*. In *Dingwall v. Dunster*, 1 *Dougl.* 249, his lordship said, "There is this difference between the acceptor and the others, that the acceptor is *first liable*." In *Smith v. Knox*, 3 *Esp. N. P. C.* 47, Lord Eldon says, "The acceptor is first liable, and the indorsees in the order in which they stand on the bill." In *Clark v. Devlin*, 3 *B. & P.* 366, Chambre J. says, "the acceptor of a bill is to be considered as the principal debtor, and the other parties as sureties only." In *Fentum v. Pocock*, 1 *Marsh.* 16, Mansfield C. J. says, "*Laxton v. Peat* is the first case in which it has even been supposed that the acceptor was not the *first*, and the last person compellable to pay the holder." In *Pownal v. Ferrand*, 6 *B. & C.* 442. Lord Tenterden says, "The acceptor was primarily liable on the bill to the plaintiff;" and Holroyd J. "The defendant as acceptor of the bill, was liable in the first instance to pay it." In *Philpot v. Briant*, 4 *Bingh.* 720, Best C. J. says, "The acceptor of a bill of exchange is considered as the principal debtor; all the

other parties to the bill are sureties that the acceptor shall pay the bill, if duly presented."

But a distinction has been taken between the primary *liability* of the acceptor, and his being the primary debtor. "Looking at the effect of a bill of exchange," says Lord Eldon, *Bishop v. Young*, 2 *B. & P.* 83. "it seems very reasonable to hold, that although the acceptor be primarily liable, yet that he is not liable for his own debt, but for that of another." *See, also, Priddy v. Henbrey*, 1 *B. & C.* 679.

It is said by *Pardessus, Cours de Droit Commercial, vol.* ii. *p.* 461. that, "Le tiré qui a accepté la lettre, méme en faisant, contre le tireur, les reserves dont nous avons parlé n. 373, s'est rendu debiteur direct et principal de la somme y enoncée." But in another place, (*p.* 346.) the same writer says, "L' acceptation n'est qu'une sûreté de plus pour le proprietaire de la lettre, et non un nouveau contrat, qui ait pour objet ou pour résultat, de substituer un debiteur à un autre; et cést en quoi le contrat de change differe essentiellement d'une vente de creance."

Upon this point appears to depend the question whether or not the acceptor is liable to pay the costs of the other parties who have been sued upon the bill, a question which will be discussed in the notes to *chapter* XII.

Note 3. *page.* 2. — "Il est important de mentionner sur chacun des exemplaires s'il est premier, deuxiéme troisiéme quatriéme, &c. et que la paiément de l'un annulera les autres; parce qu' autrement, rien ne prouvant qu'un des exemplaires est le doublée ou le triple des autres, chacun d' eux passeroit dans le commerce pour une lettre original." *Pardessus, vol. ii, p.* 367.

Note 4. *page* 12.—But it is not necessary that the money should be English money. Actions have frequently been brought in our courts on bills payable in foreign money. So in the French law, "Il ne' pas necessaire que la monnoie qui fait l'object de la convention ait un cours legal dans le lieu on la deliverance doit en etre faite ni méme dans celui ou l'on stipule; il suffit que ce soit de la monnoie d'un pays quelconque." *Pardessus, vol.* ii. *p.* 336.

Note 5. *page* 15. — Bills of this kind are mentioned by *Pothier, pl.* 16. "La cinquieme espéce est de celles qui sont payables à certains temps solennels de foirs. Par example il y a à Lyon quatre temps solennels de foire qu'on appelle vulgairement *les paiements de Lyon* qui sont chacun d'un mois — Les lettres de change payable a ces temps de foire ne font mention que du temps de la foire, sans faire autres mention précise du jour."

Note 6. *page* 27. — The Scotch law is different. The words "or order," are not necessary in that country, and a bill or note may be effectually indorsed without them by the payee. *Thomson*, 101.

Note 7. *page* 30. — The cases of *Alves v. Hodgson*, and *James v. Catherwood*, may be distinguished on the ground that in the former case, the stamp was required by the revenue laws of one of our own colonies, while in the latter it was imposed by the law of a foreign independent state. But the language of Lord Kenyon in *Alves v. Hodgson*, is general, and does not seem to recognise this distinction. "I think," says he, "we must resort to the laws of the country in which the note was made, and unless it be good there, it is not obligatory in a court of law here." In *Clegg v. Levy*, 3 *Camp.* 167, Lord Ellenborough made use of the same general expressions; "I should clearly hold, that if a stamp was necessary to render this agreement valid in *Surinam*, it cannot be received in evidence without that stamp here. A contract must be available by the law of the place where it is entered into, or it is void all the world over." It is said by Lord Mansfield, *Holman v. Johnson*, *Cowp.* 343, that "no country ever takes notice of the revenue laws of another." In matters of *penalty* it is certainly true that our courts will not recognise foreign revenue laws; *Folliott v. Ogden*, 1 *H. Bl.* 135. *Wolff v. Oxholm*, 6 *M. & S.* 99; but it does not seem to follow from thence, that when the validity of a *contract* is made to depend upon a revenue law, the courts of this country are not bound to recognise it.

Note 8. *page* 40. — In America, it has been held that if a person, not the payee of a note, *indorses* his name upon it, *at the time it is made*, intending to make himself responsible to the payee, he is liable as an original promiser. *Moies v. Bird*, 11 *Mass. R.* 436. *Bayley*, 38. *American ed.*

Note 9. *page* 47. — So in America, where a person signed a promissory note "as guardian to A. L. an insane person," it was held that he was personally liable. *Thatcher v. Dinsmore*, 5 *Mass. R.* 269. *Bayley*, 50. *Amer. edit.* Where a person subscribed a note as agent in the following form, "pro W. Gill, J. S. Colburn," it was held, in America, that Gill was liable as maker if Colburn had authority to subscribe in his name; but that, if Colburn had no authority, he was liable to a special action on the case. *Long v. Colburn*, 11 *Mass. R.* 97. *Bayley*, 51. *Amer. edit.* But in another case the pretended agent was held personally liable as maker. The court said, "If a person, under pretence of authority from another, executes a note in his name, he is bound, and the name of the person for whom he assumed to act will be rejected as sur-

plusage. The party who accepts such a note under such mistake or imposition, ought to have the same remedy against the attorney who imposes on him as he would have had against the pretended principal, if he had been really bound." *Durenbury v. Ellis*, 3 *Johns. Ca.* 70. *Bayley*, 52. *Amer. edit.*

Note 10. *page* 48.—It is difficult to reconcile the cases of *Willison v. Patteson* and *Antoine v. Morshead*. The indorsement to the plaintiff in the latter case, while he was an alien, could confer no title, (*see* 7 *Taunt.* 448.) and to allow such a contract to be enforced after the return of peace, appears to destroy the rule that contracts with aliens shall be void. *Antoine v. Morshead* is, as it seems, only to be supported on the ground that it was a contract for the benefit of British subjects detained in the foreign country. The circumstance of the action not being brought until the return of peace, will not in general enable the alien to recover. *Gamba v. Le Mesurier*, 4 *East*, 407.

Note 11. *page* 55.—In America it has been held, that where a note is payable to two joint executors, one of them cannot transfer it by his separate indorsement. *Smith v. Whiting*, 9 *Mass. R.* 334.

Note 12. *page* 57.—It has been decided in the United States, that a promissory note given by an infant for necessaries is void. *Swasey v. Vanderheyden*, 10 *Johns. R.* 33. *Bayley*, 34. *American ed.* But it has been there held, that if an infant indorse a note, an action may be maintained upon it by the indorsee against any of the prior parties. "That an infant may indorse a negotiable promissory note or a bill of exchange payable to him, seems to be well settled in the law merchant, and is no ways repugnant to the common law. Whether an infant may avoid an indorsement so made and oblige the promiser to pay him, is a question not arising in this case, for there has been no countermand or revocation of the order to pay, which is implied in his indorsement. If an action should be brought against the infant as indorser, without doubt he may avoid such action by a plea of infancy. *But that is a personal privilege which none but himself can set up in avoidance of any contract in his favor.*" *Per Parker C. J., Nightingale v. Withington*, 15 *Mass. R.* 272. *Bayley*, 34. *American ed.* The French law is to the same effect. *Pardessus, vol.* ii. *p.* 459.

Note 13. *p.* 57.—Upon the same principle viz. the want of that consent, without which a contract cannot be binding, it is said by *Parsons C. J. in Putnam v. Sullivan*, 4 *Mass. R.* 45. *Bayley*, 92. *Amer. ed.*, that "perhaps if a blind man had a note falsely and fraudulently read to him, and he indorsed it

supposing it to be the note read to him, he would not be liable as indorser, because he is not guilty of any laches."

Note 14. *page* 67.—In America it has been held that a person indorsing such a note as a surety, believing it to be good against the partnership, will not be liable upon it to the creditor to whom it has been given, and who knew that it was for a demand against one partner. *Livingston v. Hastie*, 2 *Cain.* 246. *Bayley*, 44. *Amer. ed.*

Note 15. *page* 68.—The principle upon which this distinction turns appears to be this. After an *actual* dissolution of partnership the parties are not liable *as partners*, in case they do not hold themselves forth to the world as such. The insertion of the dissolution in so public an instrument as the Gazette proves that they no longer hold themselves out *to the world* as partners. There is no method of notifying the fact in a more general and public manner. With regard to persons who have had no previous dealings with the partnership, the proof of insertion in the Gazette without any evidence of reading the Gazette, seems quite sufficient. They rely upon the parties having held themselves out *to the public* as partners; the answer is the notice to *the public* in the Gazette.

With regard to persons who have had previous dealings with the partnership the case is very different. The parties have held themselves out *to them* individually as partners, and *as to them* such character will continue until a notice that it has been abandoned is traced home *to them*. *They* do not rely on the *public* dealings of the parties, but on their *private* and individual transactions with themselves. A mere notice to the public therefore, as by advertisement in the Gazette, is no notice *to them*.

Note 16. *page* 89.—According to the French law, in the time of Pothier, a release to the drawer was a discharge of the accommodation acceptor. "Lorsque la proprietaire de la lettre de change en a fait la remise pour le tout ou pour partie, au tireur qui la lui a fournie, lorsqu'elle est volontaire, opère la liberation pour le tout ou pour partie, non seulement du tireur à qui elle est faite, mais aussi de l'*accepteur, a qui la tireur n'avoit pas encore remis les fonds* pour l'acquitter; car autrement si celui qui a fait remise de la lettre de change au tireur, pouvoit encore en demander le paiement a l'accepteur, le tireur ne jouiroit pas de la remise qui lui a été faite, puisque l'accepteur auroit recours contre lui, afin de faire donner les fonds pour le paiement de la lettre." *Pl.* 180. This reasoning applies strongly to the question in the text. The law having once recognised accommodation bills, it would seem to follow, that in this case, as in others, the consequences of such recognition

ought to follow. Why should it be held that the drawer of of an accommodation bill is not discharged by want of notice? —on the ground that the acceptor is a surety, against whom the drawer has no claim. Upon the same ground also the accommodation acceptor must be held discharged by time being given to the drawer for whom he is surety.

Note 17. *page* 100. — So it has been held in America, that payment of a debt by a counterfeit bank note is no payment, and the amount of the note may be recovered back from the person paying it. *Young v. Adams*, 6 *Mass. R.* 132. *Bayley*, 94. *Amer. Ed.*

Note 18. *page* 108.—A bill or note does not appear to be within the 4th sec. of the statute of Frauds, 29 Car. 2. c. 3. so as to require it to state the consideration, where it is given for the debt of a third person. The words of the statute are, "no action shall be brought, whereby to charge the defendant upon any special promise, to answer for the debt, &c. of another, &c." "unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing," &c. These words do not seem to apply to bills of exchange, which are peculiar mercantile instruments known to the law and importing a consideration, and which must always have been in writing.

Note 19. *page* 112. — The cases of *Charles v. Marsden*, and *Tinson v. Francis*, may perhaps be reconciled. In the former case there appears to have been no fraud, but in the latter, the plaintiff derived title from a person who transferred it in fraud of the purpose for which it was entrusted to him. Upon these cases Mr. Thomson observes, "The doctrine of these two cases combined, appears to be, that a party taking a bill or note, after the term of payment, is bound to make inquiry concerning it, and that if it turns out to be an accommodation bill or note, he may take it from the payee without being liable to any latent objections, though he will be liable to them, when he takes it from a third person, who is not presumed to have the same right of negotiating it as the payee." *Thomson on Bills*, 331. This appears to be incorrect. The party who takes a bill after it is due from the payee, takes it subject to all latent defects, except (according to *Charles v. Marsden*) the defect of want of consideration. If he takes the bill from a third person, that person must be either a party to the bill or not. If a party to the bill, then he seems to stand in the same situation as the payee: if not a party to the bill, still the person who takes the bill from him will stand in his place, and be subject to all the objections to which his title was subject.

Note 20. *page* 117.—It may be doubted, whether the defen-

dant in this case was liable even to a *bonâ fide* indorsee for value. The bill being drawn under duress, no contract arose, and it resembles the case of a bill drawn by a feme covert, who is under a disability to contract. It is observed by Mr. Thomson, that in Scotland the objection of force used to obtain the subscription of a bill or note, nullifies that subscription entirely, and that the party is as little bound by it, as if it had been forged. *Thomson on Bills*, 123.

Note 21. *page* 135.—The question, in what cases a bill or note payable on demand shall be considered as over-due, has arisen in several American cases. *See Ayer v. Hutchins*, 4 *Mass. R.* 368. *Freeman v. Hoskins*, 2 *Cain. R.* 368. *Loomis v. Pulver*, 9 *Johns. R.* 244. *Losee v. Dunkin*, 7 *Johns.* 70. *Sanford v. Mickles*, 4 *Johns. R.* 224. *Thurston v. Mc Kown*, 6 *Mass. R.* 76. *Hendrichs v. Judah*, 1 *Johns. R.* 319. The result of these authorities is thus summed up by the editor of the American edition of Bayley, *p.* 84. "Where a promissory note payable on demand is indorsed within a reasonable time after its date, it has been held in the United States, that the indorser has all the rights of an indorsee, receiving a negotiable instruments before it becomes due. But if it be not indorsed within a reasonable time, it will be considered as over-due and dishonored, and the indorser will be subject to any defence which would have been available against his indorsers. What is such a reasonable time is not precisely settled, though it is clear that a note is to be considered overdue and dishonored a year, or even eight or nine months from the date; but not overdue a few days from the date. What is a reasonable time is a question of law when the facts are settled."

Note 22. *page* 136.—The power of cancelling an indorsement while the bill remains in the possession of the indorser, seems to prove that until the delivery the passing of the property is not complete. As to cancelling indorsements, *see Pardessus, vol. ii. p.* 378.

Note 23. *page* 138.—So in France, the holder may by a restrictive indorsement, prevent the indorsee from transferring the bill, "dans l'espèce d'endossement qui ne contient qu'un simple mandat, celui au profit de qui l'ordre est passé ne peut pas ordinairement en passer l'ordre à un autre." The usual indorsements in such cases is, "*Pour moi paierez a un tel*," omitting the words "*ou à son ordre.*" *Poth. pl.* 89.

Note 24. *page* 138.—So in America, it has been held that if an indorsement specifies that there is to be no recourse to the indorser, or that it is at the risk of the indorsee, the indorser is not liable to any action by the indorsee. *Rice v. Stearns*, 3 *Mass.*

R. 225. *Welsh v. Lindo*, 7 *Cranch*, 159. *Bayley*, 95. *Am. Ed.* This appears to coincide with the French laws. "L'endosseur purroit declarer qu'il n 'entend pas être tenu des garanties que nous venons d'indiquer et restreindre son obligation * * * Toutes ces clauses, si elles sont ecrites dans l'endossement obligent le porteur; *si elles sont dans un acte separé elles ne lient que le preneur* par endossement envers l'endosseur." *Pardessus*, *vol.* ii. *p.* 378.

Note 25. *page* 139.—So in America, where in an action against the indorser of a note, it appeared that by one indorsement he had assigned part of the sum mentioned in the note, and the residue by another indorsement, the court held that the action could not be supported on the ground that an indorsement for part of a bill or note is bad, and if so, these two vicious indorsements could never constitute a good one. *Hughes v. Kiddell*, 2 *Bay*. 324. *Bayley*, 72. *Amer. Ed.*

Note 26. *page* 141.—Where a bill of exchange is indorsed to an agent, for the purpose of procuring payment, the latter is, according to *Pothier*, *pl.* 82., bound to present the bill for acceptance. So, in Scotland, where an agent employed to get a bill accepted neglected to do so for four days, during which time the drawer failed, and the drawee refused to accept, he was found liable on that account for the bill, under deduction of a dividend from the drawer's estate. *Dunlop v. Hamilton*, 1 *Bell*, 320. (*n*). *Thomson*, 437.

Note 27. *page* 142.—By the French law, bills payable at or after sight, must be presented for acceptance within certain specified periods, according to the places at which they are drawn. *Code de Commerce*, *No.* 160. *Pardessus*, *vol.* ii. *p.* 391.

Note 28. *page* 146.—By the French law, twenty-four hours are allowed to the drawee, to consider whether he will accept or not. *Code de Commerce*, *No.* 125. *Pardessus*, *vol. ii. p.* 327. But, retaining the bill after that period does not amount to an acceptance. *Ibid.*

Note 29. *page* 146.—Where a bill is drawn, payable in one place upon a person residing at another, it must be presented for acceptance at the latter place. *Pardessus*, *vol. ii. p.* 396. And in America it has been held, that where a bill is drawn upon a person resident in A. but is made payable in B. a large city, without specifying any particular place in B. it is sufficient for the holder, in order to charge the prior parties, either to present the bill to the drawee for payment at his place of residence, or to leave the bill at the place where it is payable on the day of payment, and there to have it protested, withou

making any inquiry for the drawer. *Mason v. Franklin*, 3 *Johns. R.* 202. *Boot v. Franklin*, 3 *Johns. R.* 208. *Bayley*, 135. *Amer. edit.*

Note 30. *page* 153.—Marius says, "All bills of exchange which are made payable at usances, must be reckoned directly from the *date of the bill*, which, if it be new style, and payable in London, or any place where they write old style, the date must first be found out in the old style, and then carried forward, and you cannot mistake." Thus, it appears, that though the time is to be reckoned from the *date of the bill*, yet it is to be reduced or carried forward to the style of the place where it is payable. *See Bayley*, 202.

The rule of the civil law is, *contraxisse unusquisque in eo loco intelligitur, in quo ut solveret se obligavit.* So that a bill of exchange is to be construed, as if the contract was entered into at the place where it is payable. *See Pothier, pl.* 155. *and the notes of M. Huttseau, in his edition of Poth. p.* 241.

Note 31. *page* 154.—The French law is the same with regard to bills payable after sight. "Ce delai commence a courir le lendemain du jour que la lettre a eté acceptée, *ou que le refus en a été legalement constaté.*" *Pardessus, vol.* ii. *p.* 356. *No.* 336. In America it has been held, that where a bill, payable at so many days' sight, is presented one day and accepted the next, the number of days must be computed from the day on which it was accepted, not from the day on which it was presented. *Mitchell v. Degrand*, 1 *Mason*, 176. *Bayley*, 153. *Amer. edit.*

Note 32. *page* 158.—It will be observed, that in this, and other cases, in which it has been held, that the drawer of a check is discharged by the laches of the holder, in not presenting it, the banker had failed. But it has not been decided, that where the check is presented long after its date, and payment is refused for want of funds of the drawer, and not on account of the insolvency of the bank, the drawer is discharged. In such a case, in America, where it appeared that the drawer had withdrawn his funds in the meanwhile from the bank, it was held, that he remained liable. *Per Kent, J.* "I know no case which goes the length of exonerating the drawer, where the responsibility of the bank has remained good, and where he was himself the cause of non-payment, by withdrawing the money." *Conroy v. Warren*, 9 *Johns. Ca.* 259. *Bayley*, 148. *Amer. edit. See ante, p.* 91, 149.

Note 33. *page* 162.—The rules as to days of grace in the United States are generally the same as our own. *Bayley*, 151. *Amer. edit.*

Note 34. *page* 164.—Although days of grace were not allowed in France on bills payable at sight, by virtue of a particular ordinance, yet Pothier maintains the propriety of the rule upon principle, " D'ailleurs il seroit contre l'equité qu'une personne qui prend une lettre de change à vue sur une ville par où elle doit passer sans y sejourner, et qui, pour continuer son voyage, a besoin de l'argent qu'on lui donne à recevoir par cette lettre, fût retenue dix jours sans cette ville pour en attendre le paiement." *pl.* 172. In Amsterdam days of grace are allowed on such bills. *Forbes.* 107.

Note 35. *page* 165.—The treatises differ occasionally, as to the usances of foreign bills, and the different authorities are therefore given in the text. The correctness of the table is not, perhaps, very material, for should a question arise in practice, it would be necessary to resort to the evidence of commercial men. It is said that bills from Constantinople and Smyrna, are usually drawn at thirty-one days; from North America at sixty days; and from the West Indies at thirty-one days. *Glen on Bills*, 21. 2*d ed.*

Note 36. *page* 172.—The doctrine may be considered as established in the United States, that a written promise to accept a non-existing bill is binding as an acceptance, if the holder of a bill receives it upon the credit of such promise; although the holder receives the bill from the drawer in payment of a pre-existing debt. *Gooderich v. Goodwin*, 15 *Johns. R.* 6. But such promise is not binding as an acceptance, unless the bill is drawn within a reasonable time after the promise is made; and where a bill was drawn two years after the promise was made, in order to procure the drawer's release from arrest, the person making the promise was held not to be bound as acceptor. *Coolidge v. Payson*, 2 *Wheat.* 66. *Weston v. Clements*, 3 *Mass. R.* 1. *Bayley*, 105. *Amer. ed.*

Note 37. *page* 177.—In the French law the word *accepted* is not necessary to bind the drawee, *je ferai honneur*, *je paierai*, *j'acquitterai*, are esteemed equivalent. But the word *vu* written by the drawee on a bill payable after sight, will not operate as an acceptance. *Pardessus*, *vol.* ii. *p.* 404.

Note 38. *page* 180. The result of the English cases on constructive acceptance is stated thus by Mr. Thomson, (*p.* 369.) " It has been decided in England, that acceptance is implied when the drawee not only detains the bill, but from the whole of his conduct, leads the holder to believe that he considered it as accepted." He adds in a note " This appears to have been the true ground of decision in *Harvey v. Martin*, 1 *Campb.* 425,

and not the mere circumstance of the drawee having detained the bill."

Note 39. *page* 187.—In Scotland, if the holder suffer the acceptance to be qualified; if for instance, he consent to prolong the day of payment, or to take a conditional acceptance, such as "if provisions come to hand betwixt and the day," or "if goods or bills in hand raise the sum," it imports his consent, so as to preclude him from protesting for non-acceptance. But by this prolongation of the time of payment, the drawer cannot be affected if he has not given his consent to it; and therefore the holder loses his recourse upon him in the event of the acceptor's failure before the bill becomes due. *Glen*, 115. 2*d ed. citing Poth. n.* 49. *Boucher, n.* 1048.

There does not appear to be any case in which the drawer of a bill has set up as a defence, the taking by the holder from the drawee of an acceptance qualified *as to the place of payment*. This point was involved in the third question proposed to the judges in the case of *Rowe v. Young*, 2 *B. & B.* 166. *ante, p.* 184, and their lordships differed considerably in opinion as to the effect of taking such an acceptance. They all however, agreed that where the qualified acceptance was such as must vary and prejudice the drawer's situation, it must operate as a discharge. The question, therefore, is, in what cases, and in what manner, such a qualified acceptance operates to the prejudice of the drawer.

Where the qualified acceptance postpones the time of payment, it operates as a discharge. *See Poth. pl.* 49. Where a bill drawn upon a person in London, at twenty days' date, is accepted payable in Jamaica, the time of payment is necessarily postponed and the drawer is discharged; nor is it any answer to say that the postponing of the time of payment is beneficial to the drawer. "It is impossible," says Lord Ellenborough, "to say that postponing the time of payment is always advantageous to the parties liable on the bill. Without my knowing it, I may thus be out of England at the time when the bill I drew becomes payable, and is dishonored, and thus, having made no provision for it, from the belief that it was duly honored some time before, this postponement may cause the ruin of my credit." *Outhwaite v. Luntley*, 4 *Campb.* 180.

Although the qualified acceptance may not have the effect of postponing the time of payment, yet if it necessarily postpones the time of receiving notice of dishonor, it seems that it will operate to discharge the drawer. A merchant in Liverpool draws a bill upon another merchant in that town, who without notice to the drawer, accepts it, payable at a banker's in London, "and not otherwise or elsewhere." The bill is dishonored. Had it been presented to the acceptor in Liverpool, the drawer would on the day following have received notice of the

dishonor, but an additional day is lost by the sending of the notice by post from London to Liverpool. That this circumstance will discharge the drawer, was the opinion of several of the Judges in *Rowe v. Young*.

There is another point of view, in which a special acceptance restricting the place of presentment seems to operate as a discharge. "If naming a particular house," says Mr. Justice Bayley, "casts upon the drawer any new burthen or prejudice, the holder by allowing such house to be named, has done as to him what he was not warranted in doing, and the drawer is discharged. The question then is, does the qualification, as to place, cast on the holder [drawer] a new burthen or prejudice, and if it oblige him to prove at his peril, in an action against the acceptor, what, upon a general acceptance, he would not be bound to prove; it does cast upon him a new burthen." 2 *B. & B.* 244. Such also was the opinion of the Chief Justice. "The holder who consents to take such an acceptance does by that act consent to narrow what the drawer has left at large, and to fix a single place for the demand of that money, which but for such his act would be demandable by the drawer, or for his use, anywhere and everywhere." *Id. p.* 277. It follows from this reasoning, that in all cases where the holder of a bill takes a special acceptance under the statute 1 & 2 Geo. 4. c. 78., the other parties are discharged if the acceptance was taken without their consent. But where an acceptance is taken, purporting to make the bill payable at a particular place, but without the words, "and not otherwise or elsewhere," although a presentment at that particular place would be good; yet, as the acceptance still remains general, no additional burthen is cast upon the other parties, and they, therefore, are not discharged.

Note 40. *page* 189.—It is said by a learned writer on the Scotch law of bills, *Thomson, p.* 489, that there is reason to think (although the matter does not appear to be decided) that the holder may take an acceptance *supra protest*, and yet sue the drawer or indorsers for want of acceptance by the drawee, seeing he has not got the security stipulated by the bill. That such is the French law, (Code de Com. B. 1. t. 8. s. 4. No. 128.) and that at all events it is certain that the holder, by taking an acceptance for the honor of an indorser, does not abandon his right to protest either against the drawer or any prior indorser. *Scarlet, C.* 12. *R.* 15.

Note 41. *page* 196.—In America, where a bill was protested for non-acceptance, but was on the following day accepted, but no notice of non-acceptance was given, it was held that the other parties were discharged. *Mitchell v. Degrand*, 1 *Mason*, 176. *Bayley*, 160. *Amer. ed.*

Note 42. *page* 197.—A notice of dishonor of a note due January 6th, called the note Jotham *Cushing's* note, the name of the maker being, in fact, Jotham *Cushman*, and also said that the note became due January *third*. Parker J. directed the jury to find for the plaintiff, if they believed that the defendant must, from the notice, have necessarily known what note was intended; which they accordingly did, and the whole court considered the direction correct. *Smith v. Whiting*, 12 *Mass. R.* 6. *Bayley*, 162. *Amer. ed.*

Note 43. *page* 198.—In America it has been held that notice to the drawer from a drawee, who refuses acceptance, is not sufficient. *Stanton v. Blossom*, 12 *Mass.* 116. *Bayley*, 163. *Amer. ed.*

Note 44. *page* 199.—In America it has been held, that where the indorser of a note is dead at the time it becomes due, and there are executors or administrators at that time known to the holder, notice must be given to them; but that if there are no personal representatives at the time, a notice sent to the residence of his family is sufficient, and that it is not necessary to give notice afterwards to executors or administrators, subsequently becoming such. *Merchant's Bank v. Birch*, 17 *Johns. R.* 25. *Bayley*, 418. *Amer. ed.*

Note 45. *page* 199.—Although the circumstance of one of the indorsers being one of the firm, to whom as drawers, notice of dishonor ought in usual course to be given, excuses the want of notice, yet it does not excuse the want of presentment. Thus in America it has been held that where a person was a member of two partnerships, one of which signed, and the other indorsed a note, a presentment for payment is still necessary to charge the indorsers. *Per Swift C. J.* "It is true one of the defendants must in legal consideration have known that the note was not paid, but he equally well knew, that the note when it became due had not been presented to the makers and payment demanded; he knew the fact that exonerated the defendants from all liability on their indorsement, and it would be strange logic to say that this knowledge rendered the defendants liable." *Dwight v. Scovil*, 2 *Conn. R.* 654. *Bayley*, 159. *Amer. ed.*

Note 46. *page* 199.—But in America it has been held that where a note is payable to and indorsed by two persons *not partners*, the written acknowledgment of one of them that he had received due notice is not sufficient to charge them both. *Shepherd v. Hawley*, 1 *Conn. R.* 368. *Bayley* 183. *Am. ed.*

Note 47. *page* 204.—With regard to what shall be considered the dwelling house of a party for the purpose of leaving a notice,

it has been held in America, that where the indorser of a note shut up his house in town soon after the note was made, and before it became due, and retired to his house in the country, intending however only a temporary residence there, a notice left at his house in town being put into the keyhole was sufficient to charge him. *Stewart v. Eden*, 2 *Cain. R.* 121. *Bayley* 177. *Amer. Ed.*

Note 48. *page* 207.—Many American authorities coincide with this, "The question of reasonable notice is a compound of law and fact to be submitted to a jury." *Per Kent, C. J. Taylor v. Bryden*, 8 *Johns. R.* 138. "What is reasonable notice is question of law to be decided by the court as soon as the facts necessary to the decision are ascertained." *Per Sewall J. Hussey v. Freeman*, 10 *Mass. R.* 84. *See also Huddock v. Murray*, 1 *N. Hamp. R.* 140. *Whtiwell v. Johnson*, 17 *Mass. R.* 453. "What is reasonable is a mixed question of law and fact, but when the facts are ascertained, it becomes purely a question of law." *Per Spencer J. Bryden v. Bryden*, 11 *Johns. R.* 137. In other cases it appears to have been considered a question of fact. *See Bayley*, 144. *Amer. Ed.*

Note 49. *page* 213.—In America it has been held that though a protest must be produced at the trial of an action against the indorser of a foreign bill, it is not necessary that the notice to him should be accompanied by the protest; *Lenox v. Leverett*, 10 *Mass. R.* 1. but in a previous case, Parsons C.J. says, "As to the notice of this protest of a foreign bill, a copy of the protest should be given or offered to the drawer, or due diligence used to furnish him with this notice before he can be charged." *Blakely v. Grant*, 6 *Mass. R.* 386. *Bayley*, 176. *Amer. Ed.*

Note 50. *page* 213.—In Scotland, '(where a protest is necessay both in case of inland and foreign bills, to entitle the holder to pursue recourse against the drawers and indorsers, even for the principal sum, *Ferguson & Co. v. Belsh*, 17 *June* 1803, *Morr. App. to Bills, No.* 13. *Glen.* 189. 2*d Ed.*) it seems to be sufficient to *note* the bill at the time, and that the protest may be extended at an after period. A bill drawn and accepted in London, was indorsed to Dunbar of Edinburgh, who indorsed it to Brown & Co. of Leeds. It was returned upon the latter dishonored and noted. They immediately intimated the dishonor to Dunbar, and added that "not being protested we have returned it to our bankers to have the needful done." In a suspension the Lord Ordinary "sustained the reasons of suspension; but on a reclaiming petition and answers, the court were clear that the *noting* was sufficient negotiation, and that the letter signifying only that the bill had not yet been protested,

left fully to be understood the fact that it had been *noted*, which is a common practice, the protest being afterwards drawn out in regular form. The court therefore altered the Lord Ordinary's interlocutor, and sustained the recourse against the suspender." *Brown & Co. v. Hutchison, Dunbar*, 8 *Dec.* 1807. *Mor. App. to Bills, No.* 21. *Glen*, 194. 2*d. Ed.* A protest taken in 1811, and including several bills, and irregular in other respects, was produced. The inferior court and the Lord Ordinary held, that the bills had not been duly protested and assoilzied. The charger then produced separate instruments made up from the original protest. The court held that though an instrument of protest might be extended at any distance of time, provided it was done from authentic evidence, yet there was here no such evidence, and sustained the defences. *Barbour v. Newall*, 23 *May* 1823, *ShawRep. II.* 328. *Glen*, 195. 2*d Ed.* Another writer on the Scotch law of bills says, "It seems to be now held both in Scotland and England, that noting is a kind of initial protest, which will be considered as sufficient in the meantime, provided the instrument of protest is regularly extended afterwards." *Thomson on Bills*, 477.

Note 51. *page* 222.—This rule, the policy of which has been so much contested, was observed in the French law, *Pothier, pl.* 157., and even extended to the waiving of notice to an indorser, when the *drawee* had no effects, though Pothier thinks it was otherwise if the drawee had accepted, and thereby rendered himself a debtor to the indorsers. *Id. pl.* 158. Where the transaction between the drawer and drawee is illegal, it is the same as if there were no funds in the hands of the drawee, and notice is, as it seems, unnecessary. This point arose in the following case in America. M'Dugall, the payee of a note, given to him for an illegal consideration by the maker, indorsed it to Copp. Copp having failed in an action brought by him against the promiser, sued M'Dugall as indorser, and the court held that the consideration between M'Dugall and the maker being illegal, Copp might maintain his action against M'Dugall, without proving a demand and notice of non-payment. Sewell J. giving the opinion of the court, compared this to the case of a bill where the drawer has no funds in the hands of the drawee or acceptor, the indorser standing in the relation of drawer, and the promiser having accepted, and said, "When the promise or acceptance is void, as it is in the case of usury between the drawer and the acceptor, if he will resort to that defence against his promise, the contract becomes as it respects the indorser, a draft accepted without funds, that is, in the case of a promissory note." *Copp v. M'Dugall*, 9 *Mass. R.* 1. *Bayley*, 204. *Am. Ed.*

Note 52. *page* 234.—According to Pothier, inevitable acci-

dent excuses the giving of regular notice, provided that it be given as soon afterwards as circumstances will permit. "Si par quelque force majeure et imprêvue le protêt n'avoit pu se faire le jour auquel il doit être fait, le defaut de protêt dans ledit jour ne feroit pas dechoir le proprietaire de la lettre de ses actions en garantie; car on ne peut jamais être obligé à l'impossible. Il n'est néanmoins relevé de ce defaut qu' à la charge que le protêt soit fait depuis, dans un temps dans lequel le juge estimera qu'il a pu depuis être fait, lequel temps doit être laissé à l'abitrage du juge." *pl.* 144. He then instances the death of a correspondent, to whom the bill has been sent in order to be presented, and a sudden accident happening to a messenger. *See also Pardessus, Du contrat de Change, pl.* 426. In the United States it has been held that the prevalence of a malignant fever, which put a stop to all business at the place of the residence of the drawer of a bill, was a sufficient excuse for not giving notice to him until November of a protest for non-payment in September. *Tunno v. Lague,* 2 *Johns. Ca.* 1. But Van Ness J. in a subsequent Nisi prius case ruled, that the prevalence of an epidemic was no excuse for not giving notice during its continuance. *Roosevelt v. Woodhull, Anth. N. P.* 35. *Bayley on Bills,* 175. *American Ed.* The rule is stated by Mr. Thomson, as follows: "Neglect or delay to give notice may be excused by any cause not arising from the holder's own fault, which has rendered notice impracticable, for instance, by the drawer or indorser for whom notice was intended, absconding to avoid his creditors, or by the sudden illness or death of the holder or his agent, who was employed to give notice, or any other accident which prevents notice from being given." *Thomson on Bills,* 548. So with regard to the protesting a bill, it was the opinion of London merchants, that any cause preventing the holder without his fault from protesting the bill, as his detention by contrary winds or sickness, would excuse him from protesting. *Young v. Forbes,* (*Scotch,*) *Morr.* 1580. *Thomson,* 483.

Note 53. *page* 240.—It was argued in this case, that the indorsement by the defendant was a warranty, that the prior indorsements were made by persons having competent authority, and the *dictum* of Chambre J. in *Smith v. Mercer,* 6 *Taunt.* 83. was cited, but the court seemed to doubt the propriety of that doctrine. In the French law it is said "L'Endosseur est garant solidaire avec les autres signataires, *de la vérité de la lettre,* ainsi que du paiement a l'echeance. *Pardessus, vol.* ii. *p.* 376; *and see the Code de Commerce," No.* 140.

Note 54. *page* 249.—This decision seems to be at variance with the general rule, that a contract for the payment of money is to be construed according to the law of the country where

payment is to be made. According to *Forbes, p.* 101, in case of an alteration in the currency, the creditor is to bear the loss or reap the benefit, unless he has specified the value of the coin in which a payment is to be made, in which case, the number of pieces paid will be greater or smaller, according as their value has diminished or increased. *See Thomson on Bills,* 415.

Note 55. *page* 280.—In America it has been held that in an action against the makers of a note, signed in a partnership firm, it is sufficient to prove a partnership between the defendants, and that one of the partners signed the note, without proving also, that the firm was the style and firm used by the partnership. *Drake v. Elwyn,* 1 *Cain, R.* 184. *Bayley,* 46. *Amer. Ed.*

Note 56. *page* 305.—It does not appear very clearly from the report, upon what precise ground the witness was rejected. From the observations of the Chief Justice, it would seem, that he considered the witness incompetent, on the broad ground of his liability as *acceptor* to pay to the drawer the costs of the action. If the case is to be considered as an authority to that extent, it overthrows all the decisions mentioned in the text, in which the acceptor has been admitted as a witness for the *defendant.* But it seems, that the case may be supported on another ground. The witness having received the bill for the purpose of getting it discounted, and having negligently suffered it to come into the hands of the plaintiff, who detained and sued upon it, was answerable to the defendant *upon that ground,* for the costs of the action, and therefore incompetent. *See Harman v. Lasbrey, Holt,* 390. That the case of *Edmunds v. Lowe* must be thus understood appears from a decision which took place in Trinity Term, 1829, (not yet reported) in which it was held, that the acceptor of a bill is not liable to pay the costs of an action brought against the indorser of the bill. This had previously been so held in an American case, *Barnwell v. Mitchell,* 3 *Conn. R.* 101. *Bayley,* 218. *Amer. edit.* So, it has been held, that the indorser of a note, who has been sued by the indorsee, and obliged to pay the costs of the suit, cannot, in an action against the maker, compel him to pay these costs, in addition to the amount of the note. *Simpson v. Griffin,* 9 *Johns. R.* 131. *Bayley,* 236. *Amer. edit.*

Noet 57. *page* 308.—In support of the decision of *Johnson v. Kennion,* 2 *Wils.* 262. it may be said, that the contract of the drawer is, (*see ante, p.* 73.) that the acceptor shall pay the bill, or, on default, that he will himself pay it, and that the acceptor having refused, he may now be called upon to perform the other branch of the contract. That the payment made

by the payee cannot be made on account of the drawer, who is himself indebted to the payee.

On the other hand, it may be said, that although there are various persons liable on the bill, yet that there is only one debt, and that as to the debt, every party on the face of the bill is a surety for the payment of it by the others. That a partial payment, therefore, must exonerate those others *pro tanto*, as every payment by a surety exonerates his principal. This is the opinion of Pothier, who, after observing, that the holder may sue all the parties at one time, says, "mais comme ces differents debiteurs sont debiteurs envers lui *de la meme chose*, le paiement qui lui est fait par l'un d'eux libere d'autant envers lui les autres." *pl.* 160.

Bacon v. Searles may perhaps be supported, without denying the authority of *Johnson v. Kennion*. In the former case, the payment was by *the drawer*, who may be regarded as anticipating the payment of the money which he had directed the acceptor to pay from funds in his hands.

Note 58. *page* 311.—In America it has been held, that on a note, made in one place, payable in another, interest is recoverable according to the legal rate of the place where it is payable. *Schofield v. Day*, 20 *Johns. R.* 102. So, if a bill is drawn in one country, and payable and accepted there, in an action against the acceptor, interest is recoverable only according to the legal rate of that country, although the suit is brought in another country. *Foden v. Sharp*, 4 *Johns. R.* 183. *but see Grimshaw v. Bender*, 6 *Mass. R.* 157. *Bayley*, 31, 235. *Amer. edit.*

Note 59. *page* 311.—According to Pothier, *pl.* 62. although the holder cannot recover from the drawer the supposed profits which he has lost by the bill being dishonored, yet he is entitled to recover the expences of his journey to the place where the bill was payable, whither he has gone on business, in consequence of the bill being there payable.

Note 60. *page* 315.—Although in the cases cited in the text, it has been held that the acceptor is not liable to re-exchange, yet there are several authorities the other way. It is said by *Pothier*, (*pl.* 117.) that the acceptor is liable in like manner as the drawer, upon which it is observed by Mr. Justice Bayley, that it seems reasonable that the acceptor should be liable to all parties where he has effects, and to all excepting the drawer where he has not. *Bayley*, 358. (*n.*) Such also is the opinion of Mr. Bell, (I. 316.) "It has been questioned whether the acceptor's estate is liable to a claim for re-exchange? That this accumulation of expense falls legitimately on the drawer is unquestionable. It is not a demand which

naturally arises against the acceptor by the *porteur*, for his proper recourse is against the drawer; but as the drawer will on answering that demand, have his claim against the acceptor, provided he have funds in his hands for indemnification, it does not appear that any bar would lie to a claim by the *porteur*, against the acceptor's estate in the case of the drawer becoming bankrupt, for it seems to be implied in the nature of the acceptor's engagement to this peculiar sort of instrument, that he is tacitly bound for the common mercantile damage arising from its dishonor." The learned editor of Mr. Glen's *Treatise on the Law of Bills of Exchange, &c. in Scotland*, (*p.* 272.) has made the following judicious remarks on this subject, and has pointed out what appears to be the true distinction. "The drawers and indorsers on selling the bill, received from the indorsee the exchange as well as the principal sum. When obliged to pay re-exchange therefore, they are only refunding what they have originally received, and though the exchange may, no doubt, have become more unfavourable by the term of payment than it was when they indorsed the bill, and so they may have to pay a greater sum than they received, yet it may have become less unfavourable, in which case they would be gainers. This expense thus arises altogether out of the circumstance that the drawer, for his own convenience, received his debt by means of a bill of exchange, on the negotiation of which he may, owing to the accidental fluctuations of the exchange, be a gainer or loser, but with the profit or loss on this transaction the acceptor has no concern. But the holder or drawer, on recovering the amount of the bill from the acceptor in the place of payment truly receives an equivalent for the re-exchange. That charge, as has been seen, occurs only when money is more valuable at the place of payment than at the place of drawing, and it makes the difference of value between the two currencies. See *Pothier No.* 64. *See also De Tastet v. Baring*, (*ante*, *p.* 312). *And Hoffman, Ex parte, Co. B. L.* 185. Where the acceptor pays the debt in the more valuable currency at the place of payment, it is evident that the re-exchange is included in the sum which he pays. This is acknowledged in what has been already noticed, that each indorser is liable in re-exchange according to the course of exchange between his place of residence and the place of payment, only because the exchange for this latter distance, along with the principal sum, is equivalent to the amount of the bill in the place of payment. Of course, had one of the indorsers lived in the place of payment, no re-exchange at all could have been exacted from him, and the acceptor must be in the like situation. Thus, if a merchant in Inverness should allow a bill which he has accepted, payable at Edinburgh, to be protested, but should afterwards, while it still remains in the holder's hands at Edinburgh, cause payment of it to be made there, he

ought not to be held liable in exchange, because the bill has been satisfied in the currency in which it was payable. But should payment be recovered from the acceptor at a place different from that where the bill ought to have been paid, the exchange between these places, if unfavourable to the former, ought to be paid by him, on the same principle that the drawer is liable in re-exchange, when called on to pay the bill in the place of drawing; otherwise the holder will not receive an equivalent for the sum in the dishonored bill. Thus in the case already mentioned, should the contents of the bill be recovered from the Inverness merchant in that town, he ought, it is thought, in addition, to be liable to the re-exchange between it and Edinburgh, where the bill ought to have been paid. These observations apply only to the charge of re-exchange, properly so called, and not to the charge on account of actual damage, or to the expense of protests, postages, commission, and the like, which are usually incurred on the dishonor of a bill. These expenses, as having been incurred directly by the acceptor's breach of engagement, ought to be borne by him, and it appears that he is held responsible to this extent in England." See also *Thomson on Bills*, 645.

Note 61. *page* 320.—Upon this case, Mr. Justice Bayley observes, "The enacting part of 7 Geo. 1. c. 31. s. 1. only requires that the security be taken upon good and valuable consideration; and according to *Rolfe v. Caslon*, (*See ante*, *p.* 330.) a counter acceptance is a good consideration to enable the holder of the bankrupt's acceptance to *prove*, though from this case it appears that it is not so to enable him to petition." *Bayley*, 349.

APPENDIX.

STATUTES.

No. I.—3 & 4 Anne, c. 9.

An Act for giving like Remedy upon Promissory Notes, as is now used upon Bills of Exchange, and for the better Payment of Inland Bills of Exchange.

'Whereas it hath been held, That notes in writing signed 'by the party who makes the same, whereby such party 'promises to pay unto any other person or his order any sum 'of money therein mentioned, are not assignable or in-'dorsable over within the custom of merchants to any other 'person; and that such person to whom the sum of money 'mentioned in such note is payable, cannot maintain an action 'by the custom of merchants against the person who first 'made and signed the same; and that any person to whom 'such note should be assigned, indorsed or made payable, 'could not within the said custom of merchants maintain any 'action upon such note against the person who first drew and 'signed the same;' Therefore, to the intent to encourage trade and commerce, which will be much advanced if such notes shall have the same effect as inland bills of exchange and shall be negotiated in like manner; Be it enacted, That all notes in writing that after the first day of May in the year of our Lord one thousand seven hundred and five, shall be made and signed by any person or persons, body politick or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant or trader, who is usually intrusted by him, her or them to sign such promissory notes for him, her or them, whereby such person or persons, body politick and corporate, his, her or their servant or agent as aforesaid, doth or shall promise to pay to any other person or persons, body politick and corporate, his, her or their order, or

unto bearer, any sum of money mentioned in such note, shall be taken and construed to be by virtue thereof due and payable to any such person or persons, body politick and corporate, to whom the same is made payable; and also every such note payable to any person or persons, body politick and corporate, his, her or their order, shall be assignable or indorsable over in the same manner as inland bills of exchange are or may be according to the custom of merchants; and that the person or persons, body politick and corporate to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same in such manner as he, she, or they might do upon any inland bill of exchange made or drawn acccording to the custom of merchants, against the person or persons, body politick and corporate who, or whose servant or agent as aforesaid signed the same; and that any person or persons, body politick and corporate, to whom such note that is payable to any person or persons, body politic and corporate, his, her or their order is indorsed or assigned, or the money therein mentioned ordered to be paid by indorsement thereon, shall and may maintain his, her or their action for such sum of money either against the person or persons, body politick and corporate who, or whose servant or agent as aforesaid signed such note, or against any of the persons that indorsed the same in like maner as in cases of inland bills of exchange; And in every such action the plaintiff or plaintiffs shall recover his, her or their damages and costs of suit; and if such plaintiff or plaintiffs shall be nonsuited, or a verdict be given against him, her or them, the defendant or defendants shall recover his, her or their costs against the plaintiff or plaintiffs; and every such plaintiff or plaintiffs, defendant or defendants respectively recovering may sue out execution for such damages and costs by *capias*, *fieri facias*, or *elegit*.

II. And be it further enacted by the authority aforesaid, That all and every such actions shall be commenced, sued and brought within such time as is appointed for commencing or suing actions upon the case by the statute made in the one-and-twentieth year of the reign of king James the first, intituled, *An Act for Limitation of Actions, and for avoiding of Suits in Law.*

III. Provided, That no body politick or corporate shall have power by virtue of this act to issue or give out any notes by themselves or their servants, other than such as they might have issued if this act had never been made.

IV. 'And whereas by an act of parliament made in the 'ninth year of the reign of his late majesty king William the 'third, intituled *An Act for the better Payment of inland Bills 'of Exchange*, it is among other things enacted, that from and 'after presentation and acceptance of the said bill or bills of 'exchange (which acceptance shall be by the underwriting the 'same under the party's hand so accepting), and after the ex-

'piration of three days after the said bill or bills shall become 'due, the party to whom the said bill or bills are made payable, 'his servant, agent or assigns may and shall cause the same 'bill or bills to be protested in manner as in the said act is 'enacted; And whereas by there being no provision made 'therein for protesting such bill or bills in case the party on 'whom the same are or shall be drawn, refuse to accept 'the same by underwriting the same under his hand, all mer-'chants and others do refuse to underwrite such bill or bills, 'or make any other than a promissory acceptance, by which 'means the effect and good intent of the said act in that be-'half is wholly evaded, and no bill or bills can be protested 'before or for want of such acceptance by underwriting the 'same as aforesaid:' For remedy whereof be it enacted by the authority aforesaid, That from and after the first day of May which shall be in the year of our Lord one thousand seven hundred and five, in case upon presenting of any such bill or bills of exchange, the party or parties on whom the same shall be drawn shall refuse to accept the same by underwriting the same as aforesaid, the party to whom the said bill or bills are made payable, his servant, agent or assigns may and shall cause the said bill or bills to be protested for non-acceptance as in case of foreign bills of exchange; any thing in the said act or any other law to the contrary notwithstanding, for which protest there shall be paid two shillings and no more.

V. Provided always, That from and after the said first day of May no acceptance of any such inland bill of exchange shall be sufficient to charge any person whatsoever, unless the same be underwritten or indorsed in writing thereupon; and if such bill be not accepted by such underwriting or indorsement in writing, no drawer of any such inland bill shall be liable to pay any costs, damages, or interest thereupon, unless such protest be made for non-acceptance thereof; and within fourteen days after such protest the same be sent, or otherwise notice thereof be given to the party from whom such bill was received or left in writing at the place of his or her usual abode; and if such bill be accepted and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compellable to pay any costs, damages, or interest thereupon, unless a protest be made and sent, or notice thereof be given in manner and form abovementioned. Nevertheless every drawer of such bill shall be liable to make payment of costs, damages, and interest upon such inland bill, if any one protest be made of non-acceptance or non-payment thereof, and notice thereof be sent, given, or left as aforesaid.

VI. Provided, That no such protest shall be necessary either for non-acceptance or non-payment of any inland bill of

exchange, unless the value be acknowledged and expressed in such bill to be received, and unless such bill be drawn for the payment of twenty pounds sterling or upwards; and that the protest hereby required for non-acceptance shall be made by such persons as are appointed by the said recited act to protest inland bills of exchange for non-payment thereof.

VII. And be it further enacted, That from and after the said first day of May, if any person doth accept any such bill of exchange for and in satisfaction of any former debt or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person accepting of any such bill for his debt doth not take his due course to obtain payment thereof by endeavouring to get the same accepted and paid, and make his protest as aforesaid either for non-acceptance or non-payment thereof.

VIII. Provided, That nothing herein contained shall extend to discharge any remedy, that any person may have against the drawer, acceptor or indorser of such bill.

IX. And be it further enacted by the authority aforesaid, That this act shall continue and be in force for the space of three years from the said first day of May, and from thence to the end of the next session of parliament and no longer. [Made perpetual by 7 Anne, c. 25. s. 3.]

No. II.—48 Geo. 3. c. 88.

An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum in England. [23d June, 1808.]

'Whereas various notes, bills of exchange, and drafts for 'money for very small sums have for some time past, been cir- 'culated or negotiated in lieu of cash within that part of Great 'Britain called England, to the great prejudice of trade and 'public credit, and many of such bills and drafts being payable 'under certain terms and restrictions which the poorer sort of 'manufacturers, artificers, labourers, and others, cannot com- 'ply with, otherwise than by being subject to great extortion 'and abuse: And whereas an act passed in the fifteenth year 'of the reign of his present Majesty, intituled *An Act to restrain 'the Negotiation of Promissory Notes and Inland Bills of Ex- 'change under a limited Sum, within that part of* Great Britain '*called* England, for preventing the circulating such notes and 'drafts: And whereas doubts have arisen as to the power of 'justices of the peace to hear and determine offences under the 'said act; and it is therefore expedient that more effectual pro- 'visions should be made for enforcing the provisions of the said 'act;' be it therefore enacted, That from and after the passing of this act the said recited act shall be and the same is hereby repealed.

II. And be it further enacted, that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable for the payment of any sum or sums of money, or any orders, notes, or undertakings in writing, being negotiable or transferable for the delivery of any goods specifying their value in money, less than the sum of twenty shillings in the whole, heretofore made or issued, or which shall hereafter be made or issued, shall from and after the first day of October, 1808, be and the same are hereby declared to be absolutely void and of no effect; any law, statute, usage, or custom to the contrary thereof in anywise notwithstanding.

III. And be it further enacted, That if any person or persons shall after the first day of July, 1808, by any art, device, or means whatsoever, publish or utter any such notes, bills, drafts or engagements as aforesaid, for a less sum than twenty shillings, or on which less than the sum of twenty shillings shall be due, and which shall be in anywise negotiable or transferable, or shall negotiate or transfer the same, every such person shall forfeit and pay for every such offence any sum not exceeding twenty pounds nor less than five pounds, at the discretion of the justice of the peace who shall hear and determine such offence.

IV. And be it further enacted, That it shall be lawful for any justice or justices of the peace acting for the county, riding, city, or place within which any offence against this act shall be committed, to hear and determine the same in a summary way at any time within twenty days after such offence shall have been committed; and such justice or justices upon any information exhibited, or complaint made upon oath in that behalf, shall summon the party accused, and also the witnesses on either side, and shall examine into the matter of fact, and upon due proof made thereof either by the voluntary confession of the party, or by the oath of one or more credible witness or witnesses or otherwise, (which oath such justice or justices is or are hereby authorised to administer), shall convict the offender and adjudge the penalty for such offence.

V. And be it further enacted, That if any person shall be summoned as a witness to give evidence before such justice or justices, either on the part of the prosecutor or the person accused, and shall neglect or refuse to appear at the time or place to be for that purpose appointed, without a reasonable excuse for such his neglect or refusal to be allowed by such justice or justices, then such person shall forfeit for every such offence the sum of forty shillings, to be levied and paid in such manner and by such means as are directed for recovery of other penalties under this act.

VI. And be it further enacted, That the justice or justices before whom any offender shall be convicted as aforesaid, shall

cause the said conviction to be made out in the manner and form following; (that is to say),

'Be it remembered, That on the day of 'in the year of our Lord *A. B.* having appeared before 'me [*or*, us] one [*or more*] of his Majesty's justices of the 'peace [*as the case may be*] for the county, riding, city, or 'place, [*as the case may be*] and due proof having been made 'upon oath by one or more credible witness or witnesses, or by 'confession of the party [*as the case may be*] is convicted of '[*specifying the offence.*]

'Given under my hand and seal [*or*, our hands and seals] the 'day and year aforesaid.'

Which conviction the said justice or justices shall cause to be returned to the then next general quarter sessions of the peace of the county, riding, city, or place where such conviction was made, to be filed by the clerk of the peace to remain and be kept among the records of such county, riding, city or place.

VII. Provided always, and be it further enacted, That it shall be lawful for any clerk of the peace for any county, riding, city or place, and he is hereby required upon application made to him by any person or persons for that purpose, to cause a copy or copies of any conviction or convictions filed by him under the directions of this act, to be forthwith delivered to such person or persons upon payment of one shilling for every such copy.

VIII. And be it further enacted, That the pecuniary penalties and forfeitures hereby incurred and made payable upon any conviction against this act, shall be forthwith paid by the person convicted as follows: one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed; and in case such person shall refuse or neglect to pay the same, or to give sufficient security to the satisfaction of such justice or justices to prosecute any appeal against such conviction, such justice or justices shall, by warrant under his or their hand and seal or hands and seals, cause the same to he levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and which said warrant of distress the said justice or justices shall cause to be made out in the manner and form following; (that is to say,)

'To the Constable, Headborough, or Tythingman of 'Whereas A. B. of in the county of 'is this day convicted before me [*or* us] one [*or more*] of his 'majesty's justices of the peace [*as the case may be*] for the 'county of [*or*, for the riding of 'the county of York, *or* for the town, liberty, or district of

[*as the case may be*] upon the oath of
' or a credible witness or witnesses [*or*, by con-
' fession of the party, *as the case may be*] for that the said A. B.
' hath [*here set forth the offence*] contrary to the statute in that
' case made and provided, by reason whereof the said A. B.
' hath forfeited the sum of to be distributed as herein
' is mentioned, which he hath refused to pay: These are there-
' fore in his majesty's name to command you to levy the said
' sum of by distress of the goods and chattels of him
' the said A. B. and if within the space of five days next after
' such distress by you taken, the said sum, together with the
' reasonable charges of taking the same, shall not be paid, then
' that you do sell the said goods and chattels so by you dis-
' trained, and out of the money arising by such sale, that you
' do pay one half of the said sum of to of
' who informed me [*or*, us, *as the case shall be*]
' of the said offence, and the other half of the said sum of
' to the overseer of the poor of the parish, township,
' or place where the offence was committed, to be employed for
' the benefit of such poor, returning the overplus (if any) upon
' demand, to the said A. B. the reasonable charges of taking,
' keeping, and selling the said distress being first deducted;
' and if sufficient distress cannot be found of the goods and
' chattels of the said A. B. whereon to levy the said sum of
' that then you certify the same to me, [*or*, us, *as*
' *the case shall be*] together with this warrant. Given under
' my hand and seal [*or*, our hands and seals] the day of
' in the year of our Lord .'

IX. And be it further enacted, That it shall be lawful for such justice or justices to order such offender to be detained in safe custody until return may conveniently be had and made to such warrant of distress, unless the party so convicted shall give sufficient security to the satisfaction of such justice or justices for his appearance before the said justice or justices on such day as shall be appointed by the said justice or justices for the day of the return of the said warrant or distress (such day not exceeding five days from the taking of such security); which security the said justice or justices is and are hereby empowered to take by way of recognizance or otherwise.

X. And be it further enacted, That if upon such return no sufficient distress can be had, then and in such case the said justice or justices shall and may commit such offender to the common goal or house of correction of the county, riding, division, or place where the offence shall be committed, for the space of three calendar months, unless the money forfeited shall be sooner paid, or unless or until such offender, thinking him or herself aggrieved by such conviction, shall give notice to to the informer that he or she intends to appeal to the justices

of the peace at the next general quarter sessions of the peace to be holden for the county, riding, or place wherein the offence shall be committed, and shall enter into recognizance before some justice or justices, with two sufficient sureties conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, (which notice of appeal being not less than eight days before the trial thereof, such person so aggrieved is hereby empowered to give); and the said justices at such sessions upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such quarter sessions shall be final binding and conclusive to all intents and purposes.

XI. And be it further enacted, That no person shall be disabled from being a witness in any prosecution for any offence against this act, by reason of his being an inhabitant of the parish wherein such offence was committed.

XII. Provided always, That no proceedings to be had touching the conviction or convictions of any offender or offenders against this act shall be quashed for want of form, or be removed by writ of *certiorari* or any other writ or process whatsoever into any of his majesty's courts of record at Westminster.

XIII. And be it further enacted, That if any action or suit shall be commenced against any person or persons for any thing done or acted in pursuance of this act, then and in every such case such action or suit shall be commenced or prosecuted within three calendar months after the fact committed and not afterwards; and the same and every such action or suit shall be brought within the county where the fact was committed and not elsewhere; and the defendant or defendants in every such action or suit, shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if the same shall appear to have been so done, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought or laid in any other place than as aforementioned, then the jury shall find for the defendant or defendants; or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the recovery thereof as any defendant or defendants hath or have in any other cases by law.

No. III. 7 Geo. 4. c. 6.

An Act to limit, and after a certain Period to prohibit, the issuing of Promissory Notes under a limited sum in *England*. [22*nd March* 1826.]

'Whereas it is expedient to limit, and after the expiration 'of a certain period to prohibit, the issuing, re-issuing, and 'circulation by bankers, banking companies, or other persons, 'of promissory notes, draughts, or undertakings in writing, 'under a limited sum, payable on demand to the bearer thereof, 'in that part of the United Kingdom called England:' Be it therefore enacted, That from and after the passing of this act, an act passed in the third year of the reign of his present majesty, intituled *An Act to continue, until the Fifth Day of January* 1833, *an Act of the Thirty-seventh Year of his late Majesty, for suspending the operation of an Act of the seventeenth year of his late Majesty, for restraining the Negociation of Promissory Notes and Bills of Exchange under a limited sum in* England, shall be and the same is hereby repealed.

II. Provided always, and be it enacted, That the said act passed in the seventeenth year of his late Majesty, intituled *An Act for further restraining the Negociation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, within that Part of* Great Britain *called* England, (which Act was made perpetual by an act passed in the twenty-seventh year of the reign of his late Majesty, intituled *An Act for making perpetual Two Acts, passed in the Fifteenth and Seventeenth Years of the Reign of His present Majesty, for restraining the Negociation of Promissory Notes and Bills of Exchange under a limited Sum within that Part of* Great Britain *called* England, and will, by the repeal of the said recited act of the third year of the reign of his present majesty, become and be in full force,) shall not extend or be construed to extend to any such promissory notes, or forms of promissory notes, payable to bearer on demand, of any bankers or banking companies, or other person or persons in England, duly licensed, as shall have been stamped before the fifth day of February 1826, under the provisions of any act or acts relating to the stamp duties upon promissory notes or bills of exchange under the sum of five pounds; nor to any promissory notes of the governor and company of the Bank of England, payable to the bearer on demand, for any sum under five pounds, which shall have been made out and bear date before the tenth day of October 1826, but all such promissory notes so duly stamped, or so made out, and bearing date as aforesaid, may be issued and re-issued by all such bankers and banking companies, and persons aforesaid, and by the governor and company of the Bank of England respectively, until the fifth day of April 1829; any thing in any act or acts of parliament to the contrary notwithstanding.

III. And be it further enacted, That if any body politic or corporate, or any person or persons, shall from and after the passing of this act, and before the fifth day of April 1829, make, sign, issue, or re-issue in England any promissory note payable on demand to the bearer thereof, for any sum of money less than the sum of five pounds, except such promissory note or form of note as aforesaid, of any banker or bankers, or banking companies, or person or persons duly licensed in that behalf, which shall have been duly stamped before the fifth day of February 1826; and except such promissory note of the governor and company of the bank of England as shall have been or shall be made out and bear date before the said tenth day of October 1826; or if any body politic or corporate, or person or persons, shall, after the said fifth day of April, 1829, make, sign, issue, or re-issue in England any promissory note in writing, payable on demand to the bearer thereof for any sum of money less than five pounds, then, and in either of such cases, every such body politic or corporate, or person or persons so making, signing, issuing, or re-issuing any such promissory note as aforesaid, except as aforesaid, shall, for every such note so made, signed, issued, or re-issued, forfeit the sum of twenty pounds.

IV. And be it further enacted, That if any body politic or corporate, or person or persons, in England, shall, from and after the passing of this act, publish, utter, or negotiate any promissory or other note, (not being a note payable to bearer on demand, as is hereinbefore mentioned,) or any bill of exchange, draught, or undertaking in writing, being negotiable or transferable for the payment of twenty shillings, or above that sum and less than five pounds, or on which twenty shillings, or above that sum, and less than five pounds, shall remain undischarged, made, drawn, or indorsed in any other manner than as is directed by the said act passed in the seventeenth year of the reign of his late majesty; every such body politic or corporate, or person or persons, so publishing, uttering, or negociating any such promissory or other note, (not being such note payable to bearer on demand as aforesaid,) bill of exchange, draught, or undertaking in writing, as aforesaid, shall forfeit and pay the sum of twenty pounds.

V. And be it further enacted, That the penalties which shall or may be incurred under any of the provisions of this act, and which are in lieu of the penalties imposed by the said act of the seventeenth year of his late Majesty, may be sued for, recovered, levied, mitigated, and applied in such and the same manner as any other penalties imposed by any of the laws now in force relating to the duties under the management of the commissioners of stamps.

VI. And be it further enacted, That the governor and company of the Bank of England shall, and they are hereby required, from time to time, and from and after the passing of this act, on the fifteenth day of each month in each and every

year preceding the fifth day of April 1829, (or if such days, or any of them, shall happen on a Sunday, then on the sixteenth day of any such month respectively), to cause a true and perfect account in writing to be taken and attested by the proper officer, of the total number of notes of the said governor and company, under the value of five pounds, which shall have been issued during each and every week of the preceding month, ending on the Saturday next preceding such days respectively, from Monday until Saturday in each and every week, both inclusive, distinguishing the respective denominations and values of such notes, and also stating the total amount actually in circulation at the close of business on every such Saturday, and shall cause such account to be transmitted and delivered within three days after such fifteenth day of each and every such month as aforesaid, to one of the secretaries of the commissioners of his Majesty's treasury, who shall and they are hereby required to cause the same to be published forthwith in the London Gazette, and shall also, and are hereby required to cause a copy of such account to be laid before both houses of parliament at each and every of the periods above mentioned, if parliament shall at such times be sitting, or otherwise within ten days after the next meeting of parliament.

VII. And be it further enacted, That from and after the passing of this act, the commissioners of stamps shall not be empowered to provide any stamp or stamps for expressing or denoting the duty or duties payable in England upon any promissory note for the payment to the bearer on demand of any sum of money less than the sum of five pounds; nor shall it be lawful for the said commissioners, or any of their officers, to stamp any promissory note, or the form of any promissory note, for the payment to the bearer on demand of any sum of money less than five pounds.

VIII. And whereas the said commissioners of stamps did, in pursuance of directions in that behalf from the commissioners of his Majesty's treasury of the united kingdom of Great Britain and Ireland, on the third day of February last past, order their officers not to stamp any more promissory notes for circulation in England of less value than five pounds; and it is expedient that the said commissioners of the treasury and the commissioners of stamps, and all persons acting under their authority in that behalf, should be indemnified for having so respectively acted without the authority of parliament; be it therefore enacted, That the said commissioners of his Majesty's treasury, and the said commissioners of stamps respectively, and all persons who shall by their order, in pursuance of the said directions, have refused to stamp any such notes, or to do any matter or thing relating thereto, shall be and are and is hereby saved harmless, indemnified, and discharged in respect thereof, as well as the King's Majesty, his heirs and successors, as against all and every other persons and person; and

that all suits and proceedings whatsoever touching or concerning any matter discharged by this act, shall be and the same are hereby made void and of no effect, to all intents and purposes; any law, statute, or usage to the contrary notwithstanding.

IX. Provided always, and be it further enacted, That nothing herein contained shall extend to any draught, or order drawn by any person or persons on his, her, or their banker or bankers, or on any person or persons acting as such banker or bankers, for the payment of money held by such banker or bankers, person or persons, to the use of the person or persons by whom such draft or order shall be drawn.

X. And be it further enacted, That every promissory note payable to bearer on demand, for any sum of money under the sum of twenty pounds, which shall be made and issued after the fifth day of April, 1829, shall be made payable at the bank or place where the same shall be so made and issued as aforesaid: provided always, that nothing herein contained shall extend to prevent any such promissory note from being made payable at several places, if one of such places shall be the bank or place where the same shall be so issued as aforesaid.

XI. And be it further enacted, That this act may be altered, amended, or repealed, by any act or acts to be made in this present session of parliament.

No. IV.—9 Geo. 4. c. 45.

An Act to restrain the Negotiation, in England, of Promissory Notes and Bills under a limited sum, issued in Scotland or Ireland. [15th July 1828.]

Whereas an act was passed in the seventh year of his present majesty's reign, intituled *An Act to limit, and after a certain period to prohibit, the issuing of Promissory Notes under a limited Sum in* England; and doubts may arise how far the provisions of the said act may be effectual to restrain the circulating in England of certain notes, drafts, or undertakings made or issued in Scotland or Ireland: Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That if any body politic or corporate, or person or persons, shall, after the fifth day of April one thousand eight hundred and twenty-nine, by any art, device, or means whatsoever, publish, utter, negotiate, or transfer, in any part of England, any promissory or other note, draft, engagement, or undertaking in writing, made payable on demand to bearer thereof, and being negotiable or transferable, for the payment of any sum of money less than five pounds, or on which less than the sum of five pounds shall remain undischarged, which shall have been made or issued, or shall purport to have been made or issued, in Scotland or Ireland, or elsewhere out of England, wheresoever the same shall or may be payable, every

such body politic or corporate, or person or persons, so publishing, uttering, negotiating, or transferring any such note, bill, draft, engagement, or undertaking, in any part of England, shall forfeit and pay for every such offence any sum not exceeding twenty pounds nor less than five pounds, at the discretion of the justice of the peace who shall hear and determine such offence.

II. And be it further enacted, That the penalties which may be incurred under the provisions of this act shall and may be recovered in a summary way, by information on complaint, before a justice or justices of the peace, and shall be levied and applied in the manner directed by an act passed in the forty-eighth year of the reign of his late majesty king George the third, intituled *An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange under a limited Sum in* England, with respect to the penalties by the said last-mentioned act imposed, and all and every the clauses and provisions in the said last mentioned act contained, relating to the recovery and application of the penalties thereby imposed, shall be applied and put in execution for the recovery and application of the penalties by this act imposed, as fully and effectually, to all intents and purposes, as if such clauses and provisions had been herein repeated and expressly re-enacted.

III. Provided always, and be it enacted, That it shall and may be lawful for the lord high treasurer, or for the commissioners of his majesty's treasury, or any three or more of them, to order and direct that the whole or any part of any penalty which shall be incurred under this act shall and may be remitted, or mitigated or abated to such amount, and in such manner and upon such conditions as to such lord high treasurer or commissioners of the treasury may seem fit and proper.

IV. Provided always, and be it further enacted, That nothing herein contained shall extend to any draft or order drawn by any person or persons on his, her, or their banker or bankers, or on any person or persons acting as such banker or bankers, for the payment of money held by such banker or bankers, person or persons, to the use of the person or persons by whom such draft or order shall be drawn.

No. V. — 9 Geo. 4. c. xxiii.

An Act to enable Bankers in England to issue certain unstamped Promissory Notes and Bills of Exchange, upon Payment of a Composition in lieu of the Stamp Duties thereon.

[19th June 1828.]

Whereas it is expedient to permit all persons carrying on the business of bankers in England (except within the city of London, or within three miles thereof,) to issue their promissory notes payable to bearer on demand, or to order within a limited

period after sight, and to draw bills of exchange payable to order on demand, or within a limited period after sight or date, on unstamped paper, upon payment of a composition in lieu of the stamp duties which would otherwise be payable upon such notes and bills respectively, and subject to the regulations herein-after mentioned; be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons, in this present parliament assembled, and by the authority of the same, That from and after the first day of July, one thousand eight hundred and twenty-eight, it shall be lawful for any person or persons carrying on the business of a banker or bankers in England, (except within the city of London, or within three miles thereof,) having first duly obtained a licence for that purpose, and given security by bond in manner herein-after mentioned, to issue, on unstamped paper, promissory notes for any sum of money amounting to five pounds or upwards, expressed to be payable to the bearer on demand, or to order, at any period not exceeding seven days after sight; and also to draw and issue, on unstamped paper, bills of exchange, expressed to be payable to order on demand, or at any period not exceeding seven days after sight, or twenty-one days after the date thereof; provided such bills of exchange be drawn upon a person or persons carrying on the business of a banker or bankers in London, Westminster, or the borough of Southwark, or provided such bills of exchange be drawn by any banker or bankers, at a town or place where he or they shall be duly licensed to issue unstamped notes and bills under the authority of this act, upon himself or themselves, or his or their copartner or copartners, payable at any other town or place where such banker or bankers shall also be duly licensed to issue such notes and bills as aforesaid.

II. And be it enacted, that it shall be lawful for any two or more of the commissioners of stamps, to grant to all persons carrying on the business of bankers in England (except as aforesaid,) who shall require the same, licenses authorising such persons to issue such promissory notes, and to draw and issue such bills of exchange as aforesaid, on unstamped paper; which said licenses shall be, and are hereby respectively charged with a stamp duty of thirty pounds for every such license.

III. And be it further enacted, that a separate licence shall be taken out in respect of every town or place where any such unstamped promissory notes or bills of exchange as aforesaid shall be issued or drawn: provided always, that no person or persons shall be obliged to take out more than four licences in all for any number of towns or places in England; and in case any person or persons shall issue or draw such unstamped notes or bills as aforesaid, at more than four different towns or or places, then, after taking out three distinct licences for three of such towns or places, such person or persons shall be entitled

to have all the rest of such towns or places included in a fourth licence.

IV. And be it further enacted, that every licence granted under the authority of this act shall specify all the particulars required by law to be specified in licences to be taken out by persons issuing promissory notes payable to bearer on demand, and allowed to be re-issued; and every such licence which shall be granted between the tenth day of October, and the eleventh day of November, in any year shall be dated on the eleventh day of October, and every such licence which shall be granted at any other time shall be dated on the day on which the same shall be granted; and every such licence shall (notwithstanding any alteration which may take place in any copartnership of persons to whom the same shall be granted), have effect and continue in force from the day of the date thereof until the tenth day of October, then next following, both inclusive, and no longer.

V. Provided always, and be it further enacted, That where any banker or bankers shall have obtained the licence required by law for issuing promissory notes payable to bearer on demand, at any town or place in England, and during the continuance of such licence shall be desirous of taking out a licence to issue at the same town or place unstamped promissory notes and bills of exchange under the provisions of this act, it shall be lawful for the commissioners of stamps to cancel and allow as spoiled the stamp upon the said first-mentioned licence, and in lieu thereof to grant to such banker or bankers a licence under the authority of this act; and every such last-mentioned licence shall also authorize the issuing and re-issuing of all promissory notes payable to the bearer on demand, which such banker or bankers may by law continue to issue or re-issue at the same town or place, on paper duly stamped.

VI. Provided always, and be it further enacted, That if any banker or bankers, who shall take out a licence under the authority of this act, shall issue, under the authority of either of this or any other act, any unstamped promissory notes for payment of money to the bearer on demand, such banker or bankers shall, so long as he or they shall continue licensed as aforesaid, make and issue on unstamped paper all his or their promissory notes for payment of money to the bearer on demand, of whatever amount such notes may be; and it shall not be lawful for such banker or bankers, during the period aforesaid, to issue for the first time any such promissory note as aforesaid on stamped paper.

VII. And be it further enacted, That before any licence shall be granted to any person or persons to issue or draw any unstamped promissory notes or bills of exchange under the authority of this act, such person or persons shall give security, by bond, to his majesty, his heirs and successors, with a condition, that if such person or persons do and shall from time to

time enter or cause to be entered in a book or books to be kept for that purpose, an account of all such unstamped promissory notes and bills of exchange as he or they shall so as aforesaid issue or draw, specifying the amount or value thereof respectively, and the several dates of the issuing thereof; and in like manner also, a similar account of all such promissory notes as, having been issued as aforesaid, shall have been cancelled, and the dates of the cancelling thereof, and of all such bills of exchange as, having been drawn or issued as aforesaid, shall have been paid, and the dates of the payment thereof; and do and shall from time to time, when thereunto requested, produce and show such accounts to, and permit the same to be examined and inspected by, the said commissioners of stamps, or any officer of stamps appointed under the hands and seals of the said commissioners for that purpose; and also do and shall deliver to the said commissioners of stamps half-yearly, (that is to say,) within fourteen days after the first day of January and the first day of July in every year, a just and true account in writing, verified upon the oaths or affirmations, (which any justice of the peace is hereby empowered to administer,) to the best of the knowledge and belief of such person or persons, and of his or their cashier, accountant, or chief clerk, or of such of them as the said commissioners shall require, of the amount or value of all unstamped promissory notes and bills of exchange, issued under the provisions of this or any former act, in circulation within the meaning of this act on a given day, (that is to say,) on Saturday in every week, for the space of half-a-year prior to the half-yearly day immediately preceding the delivery of such account, together with the average amount or value of such notes and bills so in circulation, according to such account; and also do and shall pay or cause to be paid to the receiver general of stamp duties in Great Britain, or to some other person duly authorized by the commissioners of stamps to receive the same, as a composition for the duties which would otherwise have been payable for such promissory notes and bills of exchange issued or in circulation during such half-year, the sum of three shillings and sixpence for every one hundred pounds, and also for the fractional part of one hundred pounds, of the said average amount or value of such notes and bills in circulation, according to the true intent and meaning of this act; and on due performance thereof such bond shall be void, but otherwise the same shall be and remain in full force and virtue.

VIII. And be it further enacted, That every unstamped promissory note payable to the bearer on demand, issued under the provisions of this act, shall, for the purpose of payment of duty, be deemed to be in circulation from the day of the issuing to the day of the cancelling thereof, both days inclusive, excepting nevertheless the period during which such note shall

be in the hands of the banker or bankers who first issued the same, or by whom the same shall be expressed to be payable; and that every unstamped promissory note payable to order, and every unstamped bill of exchange so as aforesaid issued, shall for the purpose aforesaid be deemed to be in circulation from the day of the issuing to the day of the payment thereof, both days inclusive: provided always, that every such promissory note payable to order, and bill of exchange as aforesaid, which shall be paid in less than seven days from the issuing thereof, shall, for the purpose aforesaid, be included in the account of notes and bills in circulation on the Saturday next, after the day of the issuing thereof, as if the same were then actually in circulation.

IX. And be it further enacted, That in every bond to be given pursuant to the directions of this act the person or persons intending to issue or draw any such unstamped promissory notes and bills of exchange as aforesaid, or such and so many of the said persons as the commissioners of stamps shall require, shall be the obligors; and every such bond shall be taken in the sum of one hundred pounds, or in such larger sum as the said commissioners of stamps may judge to be the probable amount of the composition or duties that will be payable from such person or persons, under or by virtue of this act, during the period of one year; and it shall be lawful for the said commissioners to fix the time or times of payment of the said composition or duties, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said commissioners, and as often as the same shall be forfeited, or the parties to the same, or any of them, shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

X. And be it further enacted, That if any alteration shall be made in any copartnership of persons who shall have given any such security by bond as by this act is directed, whether such alteration shall be caused by the death or retirement of one or more of the partners of the firm, or by the accession of any additional or new partner or partners, a fresh bond shall be given by the remaining partner or partners, or the persons composing the new copartnership, as the case may be, which bond shall be taken as a security for the duties which may be due and owing, or may become due and owing, in respect of the unstamped notes and bills which shall have been issued by the persons composing the old copartnership, and which shall be in circulation at the time of such alteration, as well as for duties which shall or may be or become due or owing in respect of the unstamped notes and bills issued or to be issued by the persons composing the new copartnership; provided that no such fresh bond shall be rendered necessary by any such alteration as aforesaid in any copartnership of persons

exceeding six in number, but that the bonds to be given by such last-mentioned copartnerships shall be taken as securities for all the duties they may incur so long as they shall exist, or the persons composing the same, or any of them, shall carry on business in copartnership together, or with any other person or persons, notwithstanding any alteration in such copartnership; saving always the power of the said commissioners of stamps to require a new bond in any case where they shall deem it necessary for better securing the payment of the said duties.

XI. And be it further enacted, That if any person or persons who shall have given security, by bond, to his majesty, in the manner herein-before directed, shall refuse or neglect to renew such bond when forfeited, and as often as the same is by this act required to be renewed, such person or persons so offending shall for every such offence forfeit and pay the sum of one hundred pounds.

XII. And be it further enacted, That if any person or persons who shall be licensed under the provisions of this act shall draw or issue, or cause to be drawn or issued, upon unstamped paper, any promissory note payable to order, or any bill of exchange which shall bear date subsequent to the day on which it shall be issued, the person or persons so offending shall, for every such note or bill so drawn or issued, forfeit the sum of one hundred pounds.

XIII. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to exempt or relieve from the forfeitures or penalties imposed by any act or acts now in force, upon persons issuing promissory notes or bills of exchange not duly stamped as the law requires, any person or persons who under any colour or pretence whatever shall issue any unstamped promissory note or bill of exchange, unless such person or persons shall be duly licensed to issue such note or bill under the provisions of this act; and such note or bill shall be drawn and issued in strict accordance with the regulations and restrictions herein contained.

XIV. And be it further enacted, That all pecuniary forfeitures and penalties which may be incurred under any of the provisions of this act shall be recovered for the use of his majesty, his heirs and successors, in his majesty's Court of Exchequer at Westminster, by action of debt, bill, plaint, or information, in the name of his majesty's attorney or solicitor-general in England.

XV. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to prejudice, alter, or affect any of the rights, powers, or privileges of the governor and company of the Bank of England.

XVI. And whereas it may happen that bankers who may be desirous to issue unstamped promissory notes payable to bearer on demand, under the provisions of this act, may have provided themselves with stamps for such notes, which may not have been issued, and which may by this act be rendered useless or unnecessary, and it is expedient to enable the commissioners of stamps to cancel and allow such stamps in manner herein-after mentioned; be it therefore enacted, That where any banker or bankers, who shall take out a licence under the authority of this act, shall have in his or their possession stamps for re-issuable promissory notes payable to the bearer on demand, which shall be rendered useless or unnecessary in consequence of such banker or bankers electing to issue such notes on unstamped paper under the provisions of this act, it shall be lawful for the said commissioners of stamps, and they are hereby authorized and empowered to cancel and allow such stamps so as aforesaid rendered useless or unnecessary, and to repay the amount or value thereof in money, deducting therefrom the sum of one pound ten shillings for every one hundred pounds, and so in proportion for any greater or less sum than one hundred pounds of such amount or value; provided proof be made by affidavit or affirmation, to the satisfaction of the said commissioners, that such stamps have not been issued; and provided application be made for such allowance within six calendar months next after the passing of this act.

XVII. And be it further enacted, That this act may be altered, amended, or repealed by any act or acts to be passed in this present session of parliament.

No. VI.—55 Geo. 3. c. 184.

An Act for repealing the Stamp Duties on Deeds, Law Proceedings, and other written or printed Instruments, and the Duties on Fire Insurances, and on Legacies and Successions to personal Estate upon Intestacies, now payable in Great Britain; and for granting other Duties in lieu thereof.

(*N. B. The new duties to commence and take place from and after the* 31*st August*, 1815.)

Section X. And be it further enacted, That from and after the passing of this act, all instruments for or upon which any stamp or stamps shall have been used of an improper denomination or rate of duty, but of equal or greater value in the whole with or than the stamp or stamps which ought regularly to have been used thereon, shall nevertheless be deemed valid and effectual in the law; except in cases where the stamp or stamps used on such instruments shall have been specially appropriated to any other instrument, by having its name on the face thereof.

XI. And be it further enacted, That if any person or persons

shall make, sign or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause or permit to be accepted or paid, any bill of exchange, draft or order, or promissory note for the payment of money, liable to any of the duties imposed by this act, without the same being duly stamped for denoting the duty hereby charged thereon, he, she or they shall, for every such bill, draft, order or note, forfeit the sum of fifty pounds.

XII. And be it further enacted, That if any person or persons shall make and issue, or cause to be made and issued, any bill of exchange, draft or order, or promissory note for the payment of money, at any time after date or sight, which shall bear date subsequent to the day on which it shall be issued, so that it shall not in fact become payable in two months, if made payable after date, or in sixty days, if made payable after sight, next after the day on which it shall be issued, unless the same shall be stamped for denoting the duty hereby imposed on a bill of exchange and promissory note for the payment of money at any time exceeding two months after date, or sixty days after sight, he, she or they shall, for every such bill, draft, order or note, forfeit the sum of one hundred pounds.

XIII. And for the more effectually preventing of frauds and evasions of the duties hereby granted on the bills of exchange, drafts, or orders for the payment of money, under colour of the exemption in favour of drafts or orders upon bankers, or persons acting as bankers, contained in the schedule hereunto annexed, be it further enacted, that if any person or persons shall, after the thirty-first day of August, one thousand eight hundred and fifteen, make and issue, or cause to be made and issued, any bill, draft or order, for the payment of money to the bearer on demand, upon any banker or bankers, or any person or persons acting as a banker or bankers, which shall be dated on any day subsequent to the day on which it shall be issued, or which shall not truly specify and express the place where it shall be issued, or which shall not in every respect fall within the said exemption, unless the same shall be duly stamped as a bill of exchange according to this act, the person or persons so offending shall, for every such bill, draft or order, forfeit the sum of one hundred pounds; and if any person or persons shall knowingly receive or take any such bill, draft, or order, in payment of or as a security for the sum therein mentioned, he, she or they shall, for every such bill, draft or order, forfeit the sum of twenty pounds; and if any banker or bankers, or any person or persons acting as a banker, upon whom any such bill, draft or order shall be drawn, shall pay or cause or permit to be paid, the sum of money therein expressed, or any part thereof, knowing the same to be post-dated, or knowing that the place where it was issued is not truly specified and set forth therein, or knowing that the same does not in any other respect fall within

the said exemption, then the banker or bankers, or person or persons so offending, shall, for every such bill, draft or order, forfeit the sum of one hundred pounds, and moreover shall not be allowed the money so paid or any part thereof, in account against the person or persons by or for whom such bill, draft or or order shall be drawn, or his, her or their executors or administrators, or his, her or their assignees or creditors in case of bankruptcy or insolvency, or any other person or persons claiming under him, her or them.

XIV. And be it further enacted, That from and after the thirty-first day of August, one thousand eight hundred and fifteen, it shall be lawful for any banker or bankers, *or other person or persons* who shall have made and issued any promissory notes for the payment to the bearer on demand, of any sum of money not exceeding one hundred pounds each, duly stamped according to the directions of this act, to re-issue the same from time to time, after payment thereof, as often as he, she or they shall think fit, without being liable to pay any further duty in respect thereof; and that all promissory notes so to be re-issued as aforesaid, shall be good and valid and as available in the law to all intents and purposes as they were upon the first issuing thereof.

XV. And be it further enacted, That no promissory note for the payment to the bearer on demand, of any sum of money not exceeding one hundred pounds, which shall have been made and issued by any bankers or other persons in partnership, and for which the proper stamp duty shall have been once paid according to the provisions of this act, shall be deemed liable to the payment of any further duty, although the same shall be re-issued by and as the note of some only of the persons who originally made and issued the same, or by and as the note of any one or more of the persons who originally made and issued the same, and any other person or persons in partnership with him or them jointly; nor although such note, if made payable at any other than the place where drawn, shall be re-issued with any alteration therein only of the house or place at which the same shall have been at first made payable.

XVI. And be it further enacted, That all promissory notes for the payment to the bearer on demand of any sum of money, which shall have been actually and *bonâ fide* issued and in circulation, before or upon the said thirty-first day of August, one thousand eight hundred and fifteen, duly stamped according to the aforesaid act of the forty-eighth year of his majesty's reign, and which shall then be re-issuable within the intent and meaning of that act, or of an act passed in the fifty-third year of his majesty's reign, for altering, explaining, and amending the said former act, with regard to the duties on re-issuable promissory notes, shall continue to be re-issuable until the expiration of three years from the date thereof respectively, but not afterwards, without payment of any further duty for the same; and if any banker or bankers, or other person or persons, shall

at any time after the said thirty-first day of August, issue, or cause to be issued for the first time, any promissory note for the payment of money to the bearer on demand, bearing date before or upon that day, he, she or they shall, for every such promissory note, forfeit the sum of fifty pounds.

XVII. Provided always, and in regard that certain bankers in Scotland have issued promissory notes for the payment to the bearer on demand of a sum not exceeding two pounds and two shillings each, with the dates thereof printed therein, and many such notes have been but recently issued for the first time, although they may appear by the date to be of more than three years standing; be it further enacted, that all such promissory notes as last-mentioned, which shall have been actually and *bona fide* issued and in circulation before or upon the said thirty-first day of August, one thousand eight hundred and fifteen, duly stamped according to the said act of the forty-eighth year of his majesty's reign, and which shall bear a printed date prior to the thirty-first day of August, one thousand eight hundred and thirteen, shall continue to be re-issuable until the thirty-first day of August, one thousand eight hundred and sixteen, but not afterwards, without payment of any further duty for the same; and if any banker or bankers, or other person or persons, shall at any time after the said thirty-first day of August, one thousand eight hundred and fifteen, issue, or cause to be issued for the first time, any such promissory note, bearing a printed date prior to the said thirty-first day of August, one thousand eight hundred and thirteen, he or they shall, for every promissory note so issued, forfeit the sum of fifty pounds.

XVIII. And be it further enacted, That from and after the thirty-first day of August, one thousand eight hundred and fifteen, it shall not be lawful for any banker or bankers, or other person or persons, to issue any promissory note for the payment of money to the bearer on demand, liable to any of the duties imposed by this act, with the date printed therein; and if any banker or bankers, or other person or persons shall issue, or cause to be issued, any such promissory note with the date printed therein, he or they shall, for every promissory note so issued, forfeit the sum of fifty pounds.

XIX. And be it further enacted, That all promissory notes hereby allowed to continue re-issuable for a limited period, but not afterwards, shall upon the payment thereof at any time after the expiration of such period, and all promissory notes, bills of exchange, drafts or orders for money, not hereby allowed to be re-issued, shall, upon any payment thereof, be deemed and taken respectively to be thereupon wholly discharged, vacated and satisfied, and shall be no longer negotiable or available in any manner whatsoever, but shall be forthwith cancelled by the person or persons paying the same; and if any person or persons shall re-issue, or cause or permit to be re-issued, any promissory note hereby allowed to be re-issued for a limited pe-

riod as aforesaid, at any time after the expiration of the term or period allowed for that purpose; or if any person or persons shall re-issue, or cause or permit to be re-issued, any promissory note, bill of exchange, draft or order for money, not hereby allowed to be re-issued at any time after the payment thereof; or if any person or persons paying or causing to be paid any such note, bill, draft or order as aforesaid, shall refuse or neglect to cancel the same, according to the directions of this act, then and in either of those cases, the person or persons so offending shall, for every such note, bill, draft or order, as aforesaid, forfeit the sum of fifty pounds; and in case of any such note, bill, draft or order, being re-issued contrary to the intent and meaning of this act, the person or persons, re-issuing the same, or causing or permitting the same to be re-issued, shall also be answerable and accountable to his majesty, his heirs and successors, for a further duty in respect of every such note, bill, draft or order, of such and the same amount as would have been chargeable thereon, in case the same had been then issued for the first time, and so from time to time as often as the same shall be so re-issued; which further duty shall and may be sued for and recovered accordingly, as a debt to his majesty, his heirs and successors; and if any person or persons shall receive or take any such note, bill, draft or order, in payment of or as a security for the sum therein expressed, knowing the same to be re-issued contrary to the intent and meaning of this act, he, she or they shall, for every such note, bill, draft or order, forfeit the sum of twenty pounds.

XX. And be it further enacted, That all promissory notes and bank post bills, which shall be issued by the governor and company of the Bank of England, from and after the said thirty-first day of August, one thousand eight hundred and fifteen, shall be freed and exempted from all the duties hereby granted; and that it shall be lawful for the said governor and company to re-issue any of their notes after payment thereof, as often as they shall think fit.

XXI. And be it further enacted, That the composition payable by the said governor and company of the Bank of England for the stamp duties on their promissory notes, and bank post bills, under the aforesaid act of the forty-eighth year of his majesty's reign, shall cease from the fifth day of April last, and that the said governor and company shall deliver to the said commissioners of stamps, within one calendar month after the passing of this act, and afterwards on the first day of May in every year whilst the present stamp duties shall remain in force, a just and true account, verified by the oath of their chief accountant, of the amount or value of all their promissory notes and bank post bills in circulation, on some given day in every week, for the space of three years preceding the sixth day of April, in the year in which the account shall be delivered,

together with the average amount or value thereof, according to such account; and the said governor and company shall pay into the hands of the receiver general of the stamp duties in Great Britain, as a composition for the duties which would otherwise have been payable for their promissory notes and bank post bills issued within the year, reckoning from the fifth day of April preceding the delivery of the said account, the sum of three thousand five hundred pounds for every million, and after that rate for half a million, but not for a less sum than half a million, of the said average amount or value of their said notes and bank post bills in circulation; and that one half part of the sum so to be ascertained as aforesaid for each year's composition, shall be paid on the first day of October, and the other half on the first day of April next after the delivery of such account as aforesaid.

XXII. Provided always, and be it further enacted, That upon the said governor and company resuming their payments in cash, a new arrangement for the composition for the stamp duties, payable on their promissory notes and bank post bills, shall be submitted to parliament.

XXIII. And be it further enacted, That from and after the thirty-first day of August, one thousand eight hundred and fifteen, it shall be lawful for the governor and company of the Bank of Scotland, and the Royal Bank of Scotland, and the British Linen Company in Scotland respectively, to issue their promissory notes for the sums of one pound, one guinea, two pounds, and two guineas, payable to the bearer on demand, on unstamped paper, in the same manner as they were authorized to do by the aforesaid act of the forty-eighth year of his majesty's reign; they the said governor and company of the Bank of Scotland, and the Royal Bank of Scotland, and British Linen Company, respectively giving such security, and keeping and producing true accounts of all the notes so to be issued by them respectively, and accounting for and paying the several duties payable in respect of such notes, in such and the same manner, in all respects, as is and are prescribed and required by the said last-mentioned act, with regard to the notes thereby allowed to be issued by them on unstamped paper, and also to re-issue such promissory notes respectively, from time to time after the payment thereof, as often as they shall think fit.

XXIV. And be it further enacted, That from and after the tenth day of October, 1815, it shall not be lawful for any banker or bankers, or other person or persons (except the governor and company of the bank of England), to issue any promissory notes for money payable to the bearer on demand, hereby charged with a duty and allowed to be re-issued as aforesaid, without taking out a licence yearly for that purpose; which licence shall be granted by two or more of the said commissioners of stamps for the time being, or by some person au-

thorized in that behalf by the said commissioners, or the major part of them, on payment of the duty charged thereon in the schedule hereunto annexed; and a separate and distinct licence shall be taken out, for or in respect of every town or place where any such promissory notes shall be issued by, or by any agent or agents for or on account of, any banker or bankers or other person or persons; and every such licence shall specify the proper name or names and place or places of abode of the person or persons, or the proper name and description of any body corporate to whom the same shall be granted, and also the name of the town or place where, and the name of the bank, as well as the partnership, or other name, style, or firm under which such notes are to be issued; and where any such licence shall be granted to persons in partnership, the same shall specify and set forth the names and places of abode of all the persons concerned in the partnership, whether all their names shall appear on the promissory notes to be issued by them or not; and in default thereof such licence shall be absolutely void; and every such licence which shall be granted between the tenth day of October and the eleventh day of November in any year, shall be dated on the eleventh day of October; and every such licence, which shall be granted at any other time, shall be dated on the day on which the same shall be granted: and every such licence respectively shall have effect and continue in force from the day of the date thereof until the tenth day of October following, both inclusive.

XXV. Provided always, and be it further enacted. That no banker or bankers, person or persons, shall be obliged to take out more than four licences in all, for any number of towns or places in Scotland; and in case any banker or bankers, person or persons shall issue such promissory notes as aforesaid, by themselves or their agents, at more than four different towns or places in Scotland, then, after taking out three distinct licences for three of such towns or places, such banker or bankers, person or persons, shall be entitled to have all the rest of such towns or places included in a fourth licence.

XXVI. Provided also, and be it further enacted, That where any banker or bankers, person or persons applying for a licence under this act, would under the said act of the forty-eighth year of his majesty's reign, have been entitled to have two or more towns or places in England, included in one licence, if this act had not been made, such banker or bankers, person or persons, shall have and be entitled to the like privilege under this act.

XXVII. And be it further enacted, That the banker or bankers, or other person or persons applying for any such licence as aforesaid, shall produce and leave with the proper officer, a specimen of the promissory notes proposed to be issued by him or them, to the intent that the licence may be

framed accordingly; and if any banker or bankers, or other person or persons (except the said governor and company of the bank of England) shall issue or cause to be issued by any agent, any promissory note for money payable to the bearer on demand, hereby charged with a duty, and allowed to be re-issued as aforesaid, without being licensed so to do in the manner aforesaid, or at any other town or place, or under any other name, style, or firm than shall be specified in his or their licence, the banker or bankers, or other person or persons so offending, shall, for every such offence, forfeit the sum of one hundred pounds.

XXVIII. And be it further enacted, That where any such licence as aforesaid shall be granted to any persons in partnership, the same shall continue in force for the issuing of promissory notes duly stamped, under the name, style, or firm therein specified, until the tenth day of October inclusive following the date thereof, notwithstanding any alteration in the partnership.

XXIX. And be it further enacted, That from and after the passing of this act promissory notes for the payment of money to the bearer on demand, made out of Great Britain, or purporting to be made out of Great Britain, or purporting to be made by or on the behalf of any person or persons resident out of Great Britain, shall not be negotiable or negotiated, or circulated or paid in Great Britain, whether the same shall be made payable in Great Britain or not, unless the same shall have paid such duty, and be stamped in such manner as the law requires for promissory notes of the like tenor and value made in Great Britain; and if any person or persons shall circulate or negotiate, or offer in payment, or shall receive and take in payment any such promissory note, or shall demand or receive payment of the whole or any part of the money mentioned in such promissory note from or on account of the drawer thereof, in Great Britain, the same not being duly stamped as aforesaid; or if any person or persons in Great Britain shall pay or cause to be paid the sum of money expressed in any such note, not being duly stamped as aforesaid, or any part thereof, either as drawer thereof, or in pursuance of any nomination or appointment for that purpose therein contained, the person or persons so offending shall, for every such promissory note, forfeit the sum of twenty pounds; Provided always, that this clause shall not extend to promissory notes made and payable only in Ireland.

SCHEDULE.—Part I.

Inland BILL of EXCHANGE, draft or order to the bearer, or to order, either on demand or otherwise,

	Duty. £ s. d.
Inland BILL of EXCHANGE—*continued.*	
not exceeding two months after *date*, or sixty days after *sight*, of any sum of money,	
Amounting to 40*s.* and not exceeding 5*l.* 5*s.*	0 1 0
Exceeding 5*l.* 5*s.* and not exceeding 20*l.*	0 1 6
Exceeding 20*l.* and not exceeding 30*l.*	0 2 0
Exceeding 30*l.* and not exceeding 50*l.*	0 2 6
Exceeding 50*l.* and not exceeding 100*l.*	0 3 6
Exceeding 100*l.* and not exceeding 200*l.*	0 4 6
Exceeding 200*l.* and not exceeding 300*l.*	0 5 0
Exceeding 300*l.* and not exceeding 500*l.*	0 6 0
Exceeding 500*l.* and not exceeding 1000*l.*	0 8 6
Exceeding 1000*l.* and not exceeding 2000*l.*	0 12 6
Exceeding 2000*l.* and not exceeding 3000*l.*	0 15 0
Exceeding 3000*l.*	1 5 0
Inland BILL of EXCHANGE, draft, or order for the payment to the bearer, or to order, at any time *exceeding two months* after date, or sixty days *after sight*, of any sum of money,	
Amounting to 40*s.* and not exceeding 5*l.* 5*s.*	0 1 6
Exceeding 5*l.* 5*s.* and not exceeding 20*l.*	0 2 0
Exceeding 20*l.* and not exceeding 30*l.*	0 2 6
Exceeding 30*l.* and not exceeding 50*l.*	0 3 6
Exceeding 50*l.* and not exceeding 100*l.*	0 4 6
Exceeding 100*l.* and not exceeding 200*l.*	0 5 0
Exceeding 200*l.* and not exceeding 300*l.*	0 6 0
Exceeding 300*l.* and not exceeding 500*l.*	0 8 6
Exceeding 500*l.* and not exceeding 1000*l.*	0 12 6
Exceeding 1000*l.* and not exceeding 2000*l.*	0 15 0
Exceeding 2000*l.* and not exceeding 3000*l.*	1 5 0
Exceeding 3000*l.*	1 10 0
Inland BILL, draft or order for the payment of any sum of money, though not made payble to the bearer, or to order, if the same shall be delivered to the payee or some person on his or her behalf	*The same duty as on a bill of exchange, for the like sum payable to bearer or order.*
Inland BILL, draft, or order for the payment of any sum of money weekly, monthly, or at any other stated periods, if made payable to the bearer or to order, or if delivered to the payee, or some person on his or her behalf where the total amount of the money thereby made payable, shall be specified therein, or can he ascertained therefrom	*The same duty as on a bill payable to bearer or order, on demand, for a sum equal to such total amount.*
And where the total amount of the money thereby made payable, shall be indefinite	*The same duty as on a bill, on demand for the sum therein expressed only.*

	Duty. £ s. d.
Inland BILL of EXCHANGE—*continued.*	
And the following instruments *shall be deemed and taken to be* inland bills, drafts or orders, for the payment of money within the intent and meaning of this schedule; *videlicet*,	
All drafts or orders for the payment of any sum of *money* by a bill or promissory note, or for the delivery of any such bill or note in payment or satisfaction of any sum of money; where such drafts or orders shall require the payment or delivery to be made to the bearer, or to order, or shall be delivered to the payee, or some person on his or her behalf.	
All receipts given by any banker or bankers, or other person or persons, for money received, which shall entitle, or be intended to entitle, the person or persons paying the money, or the bearer of such receipts, to receive the like sum from any third person or persons.	
And all bills, drafts or orders, for the payment of *any sum of money* out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, if the same shall be made payable to the bearer, or to order, or if the same shall be delivered to to the payee or some person on his or her behalf.	
Foreign BILL of EXCHANGE (or bill of exchange drawn in but payable out Great Britain), if drawn singly and not in a set . . .	*The same duty as on an inland bill of the same amount and tenor.*
Foreign BILLS of EXCHANGE drawn in sets according to the custom of merchants, for every bill of each set, where the sum made payable thereby shall not exceed 100*l.* . . .	0 1 6
And where it shall exceed 100*l.* and not exceed 200*l.*	0 3 0
And where it shall exceed 200*l.* and not exceed 500*l.*	0 4 0
And where it shall exceed 500*l.* and not exceed 1000*l.*	0 5 0
And where it shall exceed 1000*l.* and not exceed 2000*l.*	0 7 6
And where it shall exceed 2000*l.* and not exceed 3000*l.*	0 10 0
And where it shall exceed 3000*l.* . . .	0 15 0

Exemptions from the preceding and all other Stamp Duties.

All bills of exchange, or bank post bills, issued by the governor and company of the bank of England.

All bills, orders, remittance bills, and remittance certificates, drawn by commissioned officers, masters and surgeons in the navy, or by any commissioner or commissioners of the navy, under the authority of the act passed in the thirty-fifth year of his majesty's reign, for the more expeditious payment of the wages and pay of certain officers belonging to the navy.

All bills drawn pursuant to any former act or acts of parliament by the commissioners of the navy, or by the commissioners for victualling the navy, or by the commissioners for managing the transport service, and for taking care of sick and wounded seamen, upon and payable by the treasurer of the navy.

All drafts or orders for the payment of any sum of money to the bearer on demand, and drawn upon any banker or bankers, or any person or persons *acting as a banker*, who shall reside or transact the business of a banker, within *ten miles* of the place where such drafts or orders shall be *issued*, provided *such place* shall be specified in such drafts or orders, and provided the same shall bear date on or before the day on which the same shall be issued; and provided the same do not direct the payment to be made by bills or promissory notes.

All bills, for the pay and allowances of his majesty's land forces, or for other expenditures liable to be charged in the public regimental or district accounts, which shall be drawn according to the forms now prescribed or hereafter to be prescribed by his majesty's orders, by the paymasters of regiments or corps, or by the chief paymaster, or deputy paymaster, and accountant of the army depôt, or by the paymasters of recruiting districts, or by the paymasters of detachments, or by the officer or officers authorized to perform the duties of the paymastership during a vacancy, or the absence, suspension, or incapacity of any such paymaster as aforesaid; save and except such bills as shall be drawn in favour of contractors or others, who furnish bread or forage to

	Duty. £ s. d.
his majesty's troops, and who by their contracts or agreements shall be liable to pay the stamp duties on the bills given in payment for the articles supplied by them.	
PROMISSORY NOTE for the payment, to the bearer on demand, of any sum of money,	
Not exceeding one pound and one shilling .	0 0 5
Exceeding 1*l.* 1*s.* and not exceeding 2*l.* 2*s.*	0 0 10
Exceeding 2*l.* 2*s.* and not exceeding 5*l.* 5*s.*	0 1 3
Exceeding 5*l.* 5*s.* and not exceeding 10*l.* .	0 1 9
Exceeding 10*l.* and not exceeding 20*l.* .	0 2 0
Exceeding 20*l.* and not exceeding 30*l.* .	0 3 0
Exceeding 30*l.* and not exceeding 50*l.* .	0 5 0
Exceeding 50*l.* and not exceeding 100*l.* .	0 8 6
Which said notes may be re-issued, after payment thereof, as often as shall be thought fit.	
PROMISSORY NOTE for the payment, in any other manner than to the bearer on demand, but not exceeding two months after date, or sixty days after sight, of any sum of money.	
Amounting to 40*s.* and not exceeding 5*l.* 5*s.*	0 1 0
Exceeding 5*l.* 5*s.* and not exceeding 20*l.* .	0 1 6
Exceeding 20*l.* and not exceeding 30*l.* .	0 2 0
Exceeding 30*l.* and not exceeding 50*l.* .	0 2 6
Exceeding 50*l.* and not exceeding 100*l.* .	0 3 6
These notes are to be re-issued after being once paid.	
PROMISSORY NOTE for the payment, either to the bearer on demand, or in any other manner than to the bearer on demand, but not exceeding two months after date, or sixty days after sight, or any sum of money,	
Exceeding 100*l.* and not exceeding 200*l.* .	0 4 6
Exceeding 200*l.* and not exceeding 300*l.* .	0 5. 0
Exceeding 300*l.* and not exceeding 500*l.* .	0 6 0
Exceeding 500*l.* and not exceeding 1000*l.* .	0 8 6
Exceeding 1000*l.* and not exceeding 2000*l.* .	0 12 6
Exceeding 2000*l.* and not exceeding 3000*l.* .	0 15 0
Exceeding 3000*l.*	1 5 0
The notes are not to be re-issued after being once paid.	
PROMISSORY NOTE for the payment to the bearer or otherwise, at any time exceeding two months after date, or sixty days after sight, of any sum of money.	
Amounting to 40*s.* and not exceeding 5*l.* 5*s.*	0 1 6

PROMISSORY NOTE—*continued.*				Duty. £	s.	d.
Exceeding	5*l.* 5*s.*	and not exceeding	20*l.*	0	2	0
Exceeding	20*l.*	and not exceeding	30*l.*	0	2	6
Exceeding	30*l.*	and not exceeding	50*l.*	0	3	6
Exceeding	50*l.*	and not exceeding	100*l.*	0	4	6
Exceeding	100*l.*	and not exceeding	200*l.*	0	5	0
Exceeding	200*l.*	and not exceeding	300*l.*	0	6	0
Exceeding	300*l.*	and not exceeding	500*l.*	0	8	6
Exceeding	500*l.*	and not exceeding	1000*l.*	0	12	6
Exceeding	1000*l.*	and not exceeding	2000*l.*	0	15	0
Exceeding	2000*l.*	and not exceeding	3000*l.*	1	5	0
Exceeding	3000*l.*	. . . .		1	10	0

These notes are not to be re-issued after being once paid.

PROMISSORY NOTE for the payment of any sum of money by instalments, or for the payment of several sums of money at different days or times, so that the whole of the money to be paid shall be definite and certain . . . . } *The same duty as on a promissory note, payable in less than two months after date for a sum equal to the whole amount of the money to be paid.*

And the following instruments shall be deemed and taken to be promissory notes, within the intent and meaning of this schedule; viz.

All notes, promising the payment of any sum or sums of money out of any particular fund, which may or may not be available; or upon any condition or contingency, which may or may not be performed or happen; if the same shall be made payable to the bearer, or to order, and if the same shall be definite and certain, and not amount in the whole to twenty pounds.

And all receipts for money deposited in any bank, or in the hands of any banker or bankers, which shall contain any agreement or memorandum, importing that interest shall be paid for the money so deposited.

Exemptions from the duties on promissory notes.

All notes, promising the payment of any sum or sums of money out of any particular fund, which may or may not be available; or upon any condition or contingency, which may or may not be performed or happen; where the same shall not be made payable to the bearer or to order, and also where the same shall be made payable to the bearer or to order, if the

	Duty. £	s.	d.
PROMISSORY NOTE—*continued.*			
same shall amount to twenty pounds or be indefinite.			
And all other instruments, bearing in any degree the form or style of promissory notes, but which in law shall be deemed special agreements, except those hereby expressly directed to be deemed promissory notes.			
But such of the notes and instruments, here exempted from the duty on promissory notes shall nevertheless be liable to the duty which may attach thereon, as agreements or otherwise.			
Exemptions from the preceding and all other Stamp Duties.			
All promissory notes for the payment of money, issued by the governor and company of the bank of England.			
PROTEST of any bill of exchange or promissory note, for any sum of money,			
Not amounting to 20*l.* . . .	0	2	0
Amounting to 20*l.* and not amounting to 100*l.*	0	3	0
Amounting to 100*l.* and not amounting to 500*l.*	0	5	0
Amounting to 500*l.* or upwards . .	0	10	0
PROTEST of any other kind . . .	0	5	0
And for every sheet or piece of paper, parchment or vellum, upon which the same shall be written, after the first, a further progressive duty of	0	5	0

FORMS.

Declarations on inland bills, 433.
Declarations on foreign bills, 441.
Declarations on promissory notes, 442.
Declarations on checks, 445.
Notice to prove consideration 446.

INLAND BILLS.

No. I.—Payee v. Acceptor.

For that whereas, one E. F. (*a*) heretofore, to wit, on the (*b*) day of in the year of our Lord, at (*c*) to wit, at &c. according to the usage and custom of merchants, (*d*) made his certain bill of exchange in writing, bearing date a certain day and year therein in that behalf men-

(*a*) The drawer of the bill. Though the bill was drawn by an agent, it may be stated to have been drawn by the principal. *Ante*, *p.* 266. Where the bill is drawn by a firm, say, "Certain persons using the name, style, and firm, of A. & B." *Ante*, *p.* 266. As to a mistake in stating the name of the drawer, *see ante*, *p.* 264.

(*b*) The date of the bill, or if there be no date, the day on which it was made. *Ante*, *p.* 262. 24.

(*c*) Where the bill is drawn at a place not within the county in which the venue is laid, that place is usually stated, followed by the common venue, as, "At Chester, that is to say, at Westminster, in the county of Middlesex." *Ante*, *p.* 263.

(*d*) This statement is not necessary, but is usually made. *Ante*, *p.* 262.

tioned, to wit, the day and year aforesaid, directed (*e*) to the said C. D., and thereby then and there requested the said C. D. two months (*g*) after the date of the said bill of exchange, to pay to the said A. B. (*h*) or order, (*i*) the sum of £ (*k*) value received, ¶ (*l*) which said bill of exchange the said C. D. afterwards, to wit, on the day and year aforesaid, at &c. duly accepted, (*m*) according to the said usage and custom of merchants.*

By means whereof and according to the said usage and custom of merchants, the said C. D. then and there became liable (*n*) to pay to the said A. B., the said sum of money in the said bill of exchange specified, according to the tenor and effect (*o*) of the said bill of exchange, and of his said acceptance thereof, and being so liable, he the said C. D. in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at &c. undertook and then and there faithfully promised the said A. B. to pay to him the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill of exchange, and of his said acceptance thereof.†

(*e*) Where the bill is not directed to any particular person, but only to a certain place, as "Payable at No. 1, Wilmot Street," and has been accepted by the person residing there, it should not be described as directed to that person. *Ante*, p. 22. As to a conditional direction, *see Ibid.* And where the word "at," appears before the name of the drawees, *see ante*, p. 19.

(*g*) Or "at sight," or "upon demand," &c.

(*h*) If there be a mistake in the payee's name, *see ante*, p. 23. 265.

(*i*) As to the words, "Or Order," *see ante*, p. 23. 26, 27. 95. 126.

(*k*) *See ante*, p. 25. 264.

(*l*) Follow the exact words of the bill here, if the words value received are inserted at all; but it is no variance to omit them. *Ante*, p. 27. 264.

(*m*) *See ante*, p. 267. In general there is no date to the acceptance, and it is then alleged to have been made on the same day as the bill, but if there be a date to it, that date should be inserted.

(*n*) It is not necessary, though it is usual, to state the *liability* of the party, for the law will imply it from the statement of the acceptance.

(*o*) In actions against acceptors of bills and makers of notes, who are the parties primarily liable, the liability and promise are always stated to be, to pay according to the *tenor and effect* of the bill or note; but in actions against drawers of bills, or indorsers of bill or notes, as their liability is only secondary, viz., to pay on default of the acceptor or maker, the liability and promise are stated to be to pay *on request*.

[The common breach at the end of the account stated is sufficient. (*p*)]

Where the acceptance is special, under statute 1 & 2 *Geo.* 4. *c.* 78. add at the *

—and by that acceptance then and there appointed the said sum of money in the said bill of exchange specified, to be paid at Messrs. M. N.'s Lothbury, London, only and not otherwise or elsewhere. (*q*)

And after the statement of the promise (*t*) *insert the following averment.*

And the said A. B. in fact says, that afterwards and when the said bill of exchange became due and payable according to the tenor and effect thereof, to wit, on the day of in the year at &c. the said bill of exchange so accepted as aforesaid, was duly shewn and presented for payment at the said place (*r*), at which the same was by the said acceptance thereof made payable as aforesaid, and payment thereof was then and there demanded according to the tenor and effect of the said bill of exchange, and of the said acceptance thereof.

No. II.—Indorsee v. Acceptor.

Proceed as in No. I. *as far as the asterisk* *, *and then state the indorsement as follows.*

And the said G. H. (the payee) to whose order the payment of the said sum of money, in the said bill of exchange specified, was by the said bill of exchange (*s*) appointed to be made, afterwards and before the payment of the said sum of money in the

---

(*p*) The common breach is in all cases sufficient. Where it is necessary, *see ante*, *p.* 256. add counts on the consideration. The money counts, *see ante*, *p.* 253, are usually added, and the count on an account stated.

(*q*) As to the special acceptance, *see ante*, *p.* 185. When the acceptance is (as is very usually the case) "accepted payable at Messrs. A. B. & Co.'s, Bankers, London," it is only a general acceptance, and may be either stated as such or may follow the actual words of the acceptance. No averment of presentment at the special place need in such be inserted, nor if inserted, need it be proved. *Ante*, *p.* 282.

(*r*) This is sufficient without averring that the bill was presented there, either to the acceptor or to the bankers or other persons. *Ante*, *p.* 262.

(*s*) In stating a second indorsement, instead of the words "by the said bill of exchange," say, "by the said indorsement."

said bill of exchange specified, to wit, on the same day and year aforesaid (*t*), at &c. indorsed the said bill of exchange according to the said usage and custom of merchants, and by that indorsement then and there ordered and appointed the said sum of money in the said bill of exchange specified to be paid to the said A. B., and then and there delivered the said bill of exchange so indorsed as aforesaid to the said A. B. (*u*)

Then state the liability and promise as in No. I. *If the action is by a remote indorsee, state the several indorsements which you intend to insert* (*v*) *in the above form, only at the commencement instead of* "was by the said bill of exchange appointed," &c. *say,* "was by the said indorsement," or "said last mentioned indorsement, appointed to be made," *or you may use the following shorter form:*

And the said G. H. then and there indorsed and delivered the said bill of exchange to J. K. and the said J. K. then and there indorsed and delivered the said bill of exchange to the said A. B., &c. &c.

No. III.—Drawer v. Acceptor. (*w*)

State the drawing and the acceptance of the bill as in No. I. *to the * mutatis mutandis, and then proceed as follows:*

And the said A. B. avers, that afterwards, and when the said bill became due and payable according to the tenor and effect thereof, to wit, on, &c., at, &c., the said bill of exchange so accepted as aforesaid, was duly shewn and presented (*x*) for payment thereof to the said C. D. according to the said usage and custom of merchants; and the said C. D. was then and there requested to pay the said sum of money therein spe-

---

(*t*) In general there is no date to an indorsement, and the day stated in the declaration is generally the day of the date of the bill, if there should happen to be a date to the indorsement (as there must be in bills under 5*l.*, *ante*, *p.* 5, 6.) that day should be stated.

(*u*) This statement of the delivery is not necessary, but is usually inserted, *ante*, *p.* 267. Notice of an indorsement need not be averred, *ante*, *p.* 269.

(*v*) As to the indorsements which it is necessary to insert, *see ante*, *p.* 137. 268.

(*w*) This form is adapted to the case of a drawer who has been compelled to take up a bill payable to the order of a third person, and who must, therefore, shew in what manner he acquired a right to sue the acceptor, *ante*, *p.* 257. If the bill is payable to the drawer's own order, he may then sue as payee. *See No. I.*

(*x*) As to the presentment, see the notes to the next form.

cified, according to the tenor and effect of the said bill of exchange, and of his said acceptance thereof; but that the said C. D. did not, nor would, at the said time when the said bill of exchange was so presented and shewn to him for payment thereof as aforesaid, or at any time afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do. And thereupon afterwards, to wit, on, &c. (*y*), at, &c., the said bill of exchange was returned to the said A. B. for non-payment thereof, and he the said A. B. as drawer of the said bill of exchange, was then and there called upon to pay, and forced and obliged to pay, and did then and there pay to the said E. F. the said sum of money in the said bill of exchange specified, together with a large sum of money, to wit, the sum of £ (*z*) for interest thereon, whereof the said C. D. afterwards, to wit, on the day and year last aforesaid, at, &c. had notice. By means whereof, and according to the said usageand custom of merchants, the said C. D. then and there became liable to pay to the said A. B. the said several sums of money when he the said C. D. should be thereunto afterwards requested. (*a*) And being so liable, he the said C. D. in consideration thereof, afterwards, to wit, on the day and year last aforesaid at, &c. undertook, and then and there faithfully promised the said A. B. to pay him the said several sums of money, when he the said C. D. should be thereunto afterwards requested.

No. IV.—Payee v. Drawer on Refusal of Acceptance.

State the drawing of the bill as in No. I. *to* ¶ *and then proceed as follows:*

And the said A. B. avers that afterwards and before the payment of the said sum of money in the said bill of exchange specified, to wit, on, (*b*) &c., at &c., the said bill of exchange was duly presented (*c*) and shewn to the said E. F. for his

---

(*y*) The day when the bill was returned to the drawer, or some day about that time.

(*z*) Any sum large enough to cover the interest.

(*a*) The liability and promise are here stated, although the action is against an acceptor to pay on request. The liability cannot be to pay "according to the tenor and effect of the bill," for the tenor and effect of the bill are, to pay to the payee or his order.

(*b*) The day on which the presentment took place.

(*c*) As to the presentment for acceptance, *see ante*, *p.* 141, 142. This is an essential averment. *Ante*, *p.* 269.

acceptance thereof according to the said usage and custom of merchants, and the said E. F. was then and there requested to accept the same; but that the said E. F. did not nor would at the time when the said bill of exchange was so presented and shewn to him for his acceptance thereof as aforesaid, or at any time afterwards accept the same or pay the said sum of money therein specified, or any part thereof, but wholly refused and neglected so to do, ‡ of all which said several premises the said C. D. afterwards, to wit, on, &c. at, &c. had notice. (*d*)* By means whereof and according to the said usage and custom of merchants, the said C. D. then and there became liable to pay to the said A. B. the said sum of money in the said bill of exchange specified, when he the said C. D. should be thereunto afterwards requested. (*e*) And being so liable he the said C. D. in consideration thereof afterwards, to wit, on the same day and year last aforesaid, at, &c. undertook, and then and there faithfully promised, the said A. B. to pay him the said sum of money in the said bill of exchange specified, when he the said C. D. should be thereunto afterwards requested.

No. V.—Payee v. Drawer on Refusal of Payment.

State the drawing of the bill as in No. I. *to* ¶. *It is not necessary to state the acceptance, and if stated it need not be proved, ante, p.* 267. *Then proceed as follows:*

And the said A. B. avers that afterwards and when the said bill of exchange became due and payable (*g*) according to the

---

(*d*) This is an essential averment. *Ante, p.* 271. The day on which notice is given is usually stated to be the same day as the day of the dishonor. A subsequent promise to pay or part payment, will support the averment of *notice, ante, p.* 271.; but it is doubtful whether want of effects in the hands of the drawee can be given in evidence under this averment. *Ante, p.* 271. But where the notice has not been given until long after the proper time, in consequence of the party not having been found, this averment is sufficient. *Ibid.*

(*e*) *Ante, p.* 434. *note* (*o*).

(*g*) The essential part of this averment is "when the said bill of exchange became due and payable according to the tenor and effect thereof," and, therefore, if the day which follows (being stated under a videlicet) be a Sunday, it is not material. *Ante, p.* 270. Where in consequence of the party's residence being unknown the bill has not been presented till several weeks after it is due, yet this averment is sufficient. *Ante, p.* 271. But if the drawee or acceptor cannot be found, there should be an averment to that effect. *Ante, p.* 270; *and*

tenor and effect thereof, to wit, on, (*h*) &c. at, &c. the said bill of exchange was duly presented and shewn to the said E. F. for payment thereof, according to the said usage and custom of merchants, and payment thereof was then and there demanded according to the tenor and effect of the said bill of exchange [and of the said acceptance thereof (*i*)]; but that the said E. F. did not nor would, at the time when the said bill of exchange was so presented and shewn to him for payment thereof as aforesaid, or at any other time, pay the said sum of money therein specified or any part thereof, but wholly refused and neglected so to do.‡ Of all which said premises the said C. D. afterwards, to wit, on the day and year last aforesaid, at &c. had notice. (*k*)* By means whereof, *as in* No. IV. *from the* *.

No. VI.—Payee v. Drawer, where the Drawee cannot be found.

State the drawing of the bill as in No. I. *to* ¶, *then proceed as follows* (*l*):

And the said A. B. avers, that afterwards and before the payment of the said sum of money in the said bill of exchange specified, to wit, on, &c. at, &c., and on divers other days and times between that day and the day when the said bill of exchange became due and payable, according to the tenor and effect thereof; and also at the time when the said bill of exchange did become so due and payable, to wit, on, &c. at, &c., diligent search and enquiry was made after the said E. F. at ————, and elsewhere, in order that the said bill of exchange might be presented and shewn to the said E. F. for his acceptance and payment thereof, according to the said usage and custom of merchants, but that the said E. F. could not, on such search and enquiry, be found; nor hath he at any time since the making of the said bill of exchange hitherto

---

see post. A subsequent promise to pay, or part payment, *ante*, p. 167, will be evidence of presentment to support this averment. *Ante*, p. 270.

(*h*) The last day of grace. *Ante*, p. 164.

(*i*) This is inserted where there is a previous statement of the acceptance, which is unnecessary, and if inserted need not be proved. *Ante*, p. 267.

(*k*) See *ante*, p. 438. *note* (*g*).

(*l*) This averment is necessary, as the common averment of presentment will not be sufficient. *Ante*, p. 270. 288. It has been stated what is sufficient diligence in making inquiries respecting the drawee. *Ante*, p. 234.; 3 *Chitty's Plead.* 44.

accepted the same, or paid the said sum of money therein specified, or any part thereof, of all which said several premises the said C. D. afterwards, to wit, on the day and year last aforesaid, at, &c. had notice.

Then state the liability and promise, as in No. IV., *from the * to the end.*

No. VII. — PAYEE v. DRAWER, WHERE THE DRAWER HAS DISPENSED WITH THE PRESENTMENT. (*m*)

State the drawing of the bill as in No. I. *to the* ¶, *then proceed as follows:*

And the said A. B. avers, that afterwards, and when the said bill of exchange became due and payable, according to the tenor and effect thereof, to wit, on, &c. at, &c. he the said A. B. was ready and willing in due manner to present and shew the said bill of exchange to the said E. F. for payment thereof, and to demand of the said E. F. payment of the said sum of money therein specified, according to the tenor and effect thereof, and would accordingly have presented the same to the said E. F., and would have demanded payment of the said sum of money therein specified, whereof the said C. D. then and there had notice; but the said C. D. then and there requested the said A. B. not to present the said bill of exchange to the said E. F. for payment thereof, and then and there wholly dispensed with and discharged the said A. B. from the presentment of the said bill of exchange to the said E. F. for payment thereof.

Then state the liability and promise as in No. IV., *from * to the end.*

No. VIII.—PAYEE v. DRAWER, WHERE THE DRAWEE HAS NO EFFECTS IN THE HANDS OF THE DRAWEE. (*n*)

Instead of the averment of notice after the statement of presentment, proceed as follows:

And the said plaintiff avers, that at the time of the making of the said last-mentioned bill of exchange, and from thence until and at the time when the same was so presented and shewn to the said E. F. for payment thereof as aforesaid, he,

---

(*m*) *See ante*, p. 235, 236.

(*n*) It is doubtful whether this circumstance can be given in evidence under the general averment of notice. *Ante*, p. 271. See the form, 3 *Chitty's Plead.* 44.; *Bills*, 505, 7th ed. A count in the usual form should also be inserted.

the said E. F. had not in his hands any effects of the said C. D., nor had he received any consideration from the said C. D. for the acceptance or payment by him the said E. F. of the said last-mentioned bill of exchange, nor has the said C. D. sustained any damage by reason of his not having notice of the non-payment by the said E. F. of the said sum of money in the said last-mentioned bill of exchange specified, of all which said premises he the said C. D. afterwards, to wit, on, &c. at, &c. had notice. By means, &c.

FOREIGN BILLS.

No. IX. — Payee v. Acceptor, (*o*)

For that whereas one E. F. heretofore, to wit, on, &c. in parts beyond the seas, to wit, at that is to say, at, &c. (*p*) according to the usage and custom of merchants, made his certain bill of exchange in writing, bearing date a certain day and year therein in that behalf mentioned, to wit, the same day and year aforesaid, and then and there directed the said bill of exchange to the said C. D., by which said bill of exchange the said E. F. then and there requested the said C. D., at two usances, (*q*) that is to say, at two months after the date of the said bill of exchange, to pay (*r*) to the said A. B. or order,

---

(*o*) See the notes to No. I. *ante*, *p.* 433.

(*p*) The common venue.

(*q*) Sometimes there is inserted a separate averment of the usance: "And the said A. B. in fact says, that an usance mentioned in any bill of exchange drawn in London and payable in Venice, is, and at the said several times aforesaid was three calendar months from the date of the said bill and no other time whatever." *Bayley*, 302. *See ante*, *p.* 165.

(*r*) Where the bill is in parts, here the usual averment is, "to pay that his first of exchange, (second and third of the same tenor and date not paid), to &c." *in the words of the bill.* "In an action on a bill consisting of several parts, if the plaintiff has each part, it may be doubted whether he need take notice of this condition, because all the parts taken collectively make an unconditional bill, and where he has not each part it should seem more correct to state that the drawer made his certain bill of exchange in writing in three parts, his proper hand being subscribed to each of the said parts, bearing date, &c. and directed, &c. and by each of the said parts requested, &c. but the form above adopted is the usual one." *Bayley*, 312.

the sum of £ (*s*) value received, and then and there delivered the said bill of exchange to the said A. B.*

Then state the acceptance and liability as in No. I. *from* ¶ *to the end.*

No. X.—Payee v. Drawer.

State the drawing of the bill as in the last form to, then state the presentment, if for acceptance, as in No.* IV. *to* ‡ *if for payment* (*t*) *as in No.* V. *to* ‡, *then proceed as follows*:

Whereupon the said bill of exchange afterwards, to wit, on &c., at, &c. was duly protested (*u*) for non-acceptance (or non-payment) thereof, according to the said usage and custom of merchants, of all which said several premises the said C. D. afterwards, to wit, on the day and year last aforesaid, at, &c. had notice.

Then state the liability and promise to pay, as in No. IV. *from* * *to the end.*

No. XI. Indorsee v. Acceptor or Drawer.

The form will be the same as in the two last precedents, with the addition of the indorsements; see No. II. *ante.*

PROMISSORY NOTES. (*v*).

No. XII. Payee v. Maker.

For that whereas the said C. D. (*w*) heretofore, to wit, on the day of in the year of our Lord

---

(*s*) A certain sum of foreign money called in the said bill of exchange, seven hundred ducats. *Bayley*, 301. It seems not to be necessary to aver the value in English money. Id. p. 330. *Simmonds v. Parminter*, 1 *Wils.* 185. 4 *Br. P. C.* 604.

(*t*) If the bill has been drawn in parts, and is so stated in the commencement, add after the refusal to pay, "nor did the said (drawee or acceptor) pay the said second or third of exchange."

(*u*) The omission of this averment is only ground of special demurrer, *ante*, *p.* 271. A subsequent promise to pay a part payment will be evidence of this averment. *Ante*, *p.* 168. 271.

(*v*) The notes to the forms on bills of exchange will in general apply to these Forms.

(*w*) As to joint and several notes, *see ante*, *p.* 265.

at . to wit, at made his certain note in writing, commonly called a promissory note, bearing date a certain day and year therein in that behalf mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay (*x*) months after the date of the said note, to the said A. B. or order, the sum of £ for value received.* By means whereof, and by force of the statute in such case made and provided, (*y*) the said C. D. then and there became liable to pay to the said A. B. the said sum of money in the said note specified, according to the tenor and effect (*z*) of the said note, and being so liable, he said C. D. in consideration thereof, afterwards, to wit, on the day and year aforesaid, at &c., undertook, and then and there faithfully promised the said A. B. to pay him the said sum of money in the said note specified, according to the tenor and effect of the said note.

No. XIII.—Indorsee v. Maker.

State the making of the note as in No XII. *to the*, and then proceed as follows:*

And the said E. F. to whom or to whose order the payment of the said sum of money in the said note specified, was by the said note appointed to be made, afterwards and before the payment of the said sum of money in the said note specified, to wit, on the day and year aforesaid, at, &c. indorsed the said note, and thereby then and there ordered and appointed the said sum of money in the said note specified to be paid to the said A. B.

Then state the liability as in No. XII. *from the* to the end, only adding after* "according to the tenor and effect," &c. *the words* "and of the said indorsement so made thereon as aforesaid."

If the action is brought by the second or other indorsee, add the proper indorsements as directed, ante, p. 436.

(*x*) If a special place of payment is mentioned in the body of the note, insert it here. *Ante, p.* 151. And in such case insert at the end of the present count, an averment of presentment at that particular place, which may be framed from the form given in No. I. *ante.* If the special place of payment be no part of the contract, *ante, p.* 150., take no notice of it.

(*y*) This averment is not necessary, though usual. *Ante, p.* 262.

(*z*) *See ante, p.* 434. *note* (*o*).

No. XIV.—Indorsee v. Indorser.

State the making of the note as in No. XII. *to the*, then the indorsement by the payee as in* No. XIII. *and unless the payee is the defendant, the indorsements to and by the defendant, and after the statement of the indorsements, proceed as follows:*

And the said A. B. avers, that afterwards and when the said note became due and payable according to the tenor and effect thereof, to wit, on, &c., at, &c., the said note so indorsed as aforesaid was duly presented and shewn for payment thereof to the said (*a*), and payment thereof was then and there demanded, according to the tenor and effect of the said note and of the said indorsement so made thereon as aforesaid, but that the said did not nor would at the said time, when the said note was so presented and shewn to him for payment thereof as aforesaid, or at any time afterwards, pay the said sum of money therein specified, or any part thereof, but wholly refused and neglected so to do, of all which said several premises the said C. D. afterwards, to wit, on the day and year last aforesaid, at, &c. had notice. By means whereof, and by force of the statute in such case made and provided, the said C. D. then and there became liable to pay to the said A. B. the said sum of money in the said note specified, when he the said C. D. should be thereunto afterwards requested. And being so liable, he the said C. D. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at &c. undertook, and then and there faithfully promised the said A. B. to pay him the said sum of money in the said note specified, when he the said C. D. should be thereunto afterwards requested.

No. XV.—Payee v. Maker of Note payable by Instalments.

State the making of the note as in No. XII. *down to the * only stating also that it is payable by instalments as expressed in the body of the note. Then state the liability as in* No. XII., *from the * to the end. Then add the following averment:*

And the said A. B. avers that afterwards and after the making of the said note, to wit, on, &c. at, &c., the said first mentmentioned sum of £ , part of the said sum of £ , in the said note specified, became and was due and payable from the said C. D. to the said A. B., upon and by virtue of the said note, and which said last mentioned sum of £ , he the said

(*a*) The maker.

C. D. ought then and there to have paid to the said A. B. according to the tenor and effect of the said note, and of the said promise and undertaking so by him made as aforesaid.

DECLARATIONS ON CHECKS.

No. XVI.—Payee v. Drawer.

For that whereas the said C. D. heretofore, to wit, on, &c. at, &c. according to the usage and custom of merchants, made his certain draft or order in writing for the payment of money commonly called a check on a banker, bearing date a certain day and year therein in that behalf mentioned, to wit, the day and year aforesaid, and then and there directed the said draft or order to certain persons by the name, style and firm of Messrs. , and thereby then and there requested the said Messrs. to pay to the said A. B. or bearer the sum of £ , and then and there delivered the said draft or order to the said A. B. * And the said A. B. avers that after the making of the said draft or order, and before the payment of the said sum of money therein specified, to wit, on, &c. at, &c. the said draft or order was presented and shewn to the said Messrs. for payment thereof according to the said usage and custom of merchants, and the said Messrs. were then and there requested to pay the said sum of money therein specified according to the tenor and effect thereof, but that the said Messrs. did not nor would at the said time when the said draft or order was so presented and shewn to them for payment thereof as aforesaid, or at any time afterwards, pay the said sum of money therein specified, or any part thereof, but wholly refused and neglected so to do, whereof the said C. D. afterwards, to wit, on the day and year last aforesaid, at, &c. had notice. By means whereof he the said C. D. then and there became liable to pay to the said A. B. the said sum of money in the said draft or order specified, when he the said C. D. should be thereunto afterwards requested. And being so liable he the said C. D. in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at, &c. undertook, and then and there faithfully promised the said A. B. to pay to him the said sum of money in the said draft or order specified, when he the said C. D. should be thereunto afterwards requested.

No. XVII.—Bearer v. Drawer.

*Similar to the last form, only inserting at the * the following averment.*

And the said E. F. to whom or to the bearer of the said draft or order the payment of the said sum of money therein

specified, was by the said draft or order appointed to be made, after the making of the said draft or order, and before the payment of the said sum of money therein specified, to wit, on, &c. at, &c. duly transferred, assigned and delivered the said draft or order to the said A. B., who thereby then and there became and was, and from thence hitherto hath been, and still is, the lawful bearer thereof, and entitled to the said sum of money therein specified.

No. XVIII.—Notice to prove Consideration. (*b*)

Between A. B., plaintiff,
and
C. D. defendant.

I hereby give you notice, that on the trial of this cause the above-named defendant will insist and give in evidence, that the supposed bill of exchange (or promissory note) mentioned in the declaration in this cause, was obtained from the said defendant (or from G. H.), without legal or sufficient consideration and by undue means, and that the said defendant is not liable to pay the same; and I do hereby further give you notice and require you on the said trial to prove the consideration given by the said plaintiff, and every other party for the said bill of exchange, and when such consideration was given and paid, and in what manner, and the person or persons by and from whom the same bill of exchange was obtained by the said plaintiff or by any other person, and the time when the said plaintiff and any other person became the holder thereof; and I do hereby further give you notice, and require you on the said trial to produce and give in evidence all letters and copies of letters and books of account in any way relating to the said bill of exchange, particularly a certain letter dated, &c.

Dated, &c.

Yours, &c. L. M.
Attorney for the said Defendant.

To Mr. A. B. the above-named
Plaintiff, and Mr. ——, his
Attorney or Agent.

(*b*) *See ante, p.* 123. Chitty, 512. 7th ed.

INDEX.

ABATEMENT, plea of misnomer of party to suit, 265; of non-joinder, 265.

ABSCONDING of drawee of bill or maker of note equivalant to dishonor, 147.

ACCEPTANCE. *General points relating to*, what is a material alteration in, 38; how made by one of several partners, 59; see *Partners*, by one partner in fraud of the others, 61, 62; is *primâ facie* evidence of assess, 104; presentment for, 141; general acceptance, presentment in case of, 147; special acceptance, presentment in case of, 148.

Presentment, to whom, 146; forged acceptances, 243, see *Forgery*; statement of acceptance in the declaration, 267; what the acceptance admits, 280, 282.

By whom, drawee or agent, 170, 171; cannot be by two, where bill is directed to one only, 171; agent accepting bill drawn upon him in his own name personally liable, 171; by one of several persons, not partners, binds himself only, 171; where the bill is directed to no person but to a particular place, 171.

At what time, 171; whether a bill can be accepted before it is drawn, 171, 172, *note* 36; whether a person writing an acceptance on a blank bill is liable, 172; bill may be accepted after it is due, 172.

Form, verbal, 173; at common law, verbal acceptance good, 173; not good in cases of inland bills by stat. 1 & 2 Geo. 4. c. 78, 173; still good in cases of foreign bills, 173.

What amounts to good acceptance not on the bill, 173; a collateral promise to accept a foreign bill is good, 174; though the bill has not been taken on the credit of such promise, 174, 175; where such an acceptance is conditional

ACCEPTANCE—*continued.*
will not amount to a good collateral acceptance of a foreign bill, 177; promise to accept made on executory consideration, 177.
What amounts to a good acceptance on the bill, 177, *note*, 37; whether defacing the bill is an acceptance, 178,
What acts, where there is no express acceptance or promise to accept, will amount to an acceptance, 178; whether retaining a bill operates as an acceptance, 178, 179, 180, *note*, 38; request to A. to accept and draw on B., the drawing on B. is not an acceptance, 180; marking a check equivalent to acceptance, 180, 181.
Special acceptance at a particular place, 181; varying decisions of K. B. and C. P., 181, 182, 183, 184; settled by *Rowe v. Young*, that presentment must be averred and proved against drawer or acceptor, 184; statute 1 & 2 Geo. 4. c. 78., 185; when a bill is payable in London, &c. holder may demand a special acceptance, 186.
Conditional acceptance, 186; good, 186; but the holder may refuse it, 187; if he takes it he should give notice to the other parties, 187; *Note* 39; must not be declared on as an absolute acceptance, though condition performed, 187; conditions should be expressed on the acceptance, 187.
Acceptance varying from the terms of the bill, 187; drawee bound by, 188; but holder should give notice to other parties, 188; a refusal by holder to take such acceptance will prevent him from afterwards resorting to it, 188; holder may refuse it, 189.
Acceptance, supra protest, 189; *note*, 40; by drawee or third person, 189; by more than one person, 189; whether the holder can refuse such an acceptance, 189; inquiry should be made why the drawee has refused, 190; protest must be made before acceptance, 190.
Acceptance, supra protest, mode of, 190.
Acceptance, supra protest, liability of the acceptor, 190; in the nature of a conditional acceptor to pay if drawee does not, 191.
Remedy of the acceptor supra protest, 191; stands in the place of the party from whose honor he acccepted, 191; may sue the former acceptor, 192.
Cancellation of acceptance, 192; acceptance may be cancelled before delivery, 192; cancellation by mistake does not discharge the acceptor, 192; cancellation of the name of the maker of a check by mistake no discharge, 192.
ACCEPTOR. See *Accommodation Acceptor. General points relating to*; is *prima facie* a debtor to the drawer, 1, 2; is

ACCEPTOR—*continued.*
it must appear to have been performed, 175; what words primarily liable, 2; *note* 2; there cannot be two acceptors where a bill is directed to one person, 22; may prove that a bill was made abroad and is therefore void, 29; may render himself liable as such by adopting the act of third person, who has accepted bills in his name, 44; cannot set up infancy of drawer as a defence, 56; infant not liable as, 57; giving time to, discharge of other parties, 74; and see *Indulgence, Drawer,* and *Indorser;* varying the liability of, discharges other parties, 76; at what place presentment must be made to him, 147 to 149; see *Presentment;* liability of acceptor *supra protest,* 190; see *Acceptance;* notice of dishonor to, not necessary, 199; when justified in paying lost bill, 241; when guilty of negligence in paying forged bills, 242, 243, 244; staying proceedings in action against, 272; cannot set up forgery of drawer's name, 280; nor of his own where he has recognised his hand, 281, 282; what he admits by his acceptance, 280, 282; competency of, 304.

Liability of, 83; not for re-exchange, 83; to pay forged bill, 83; to pay bill immediately on its becoming due, 84; to pay interest, 310.

Liability of, how discharged, by release, 84; but not where bill comes into hands of indorsee for value without notice, 84; by waiver or renunciation, 84 to 87; not by holder, insolvent, omitting to include bill in schedule, 86; liability suspended by taking substituted bill, 87; person taking up accommodation bill to prevent proceedings against the drawer, may sue the acceptor, 88; whether accommodation acceptor is discharged by time given to the drawer, 89; and *note* 16; whether neglect to present a bill will discharge acceptor, 90; liability discharged by foreign bankruptcy, &c. 91, 92; not by a cancellation of acceptance by mistake, 192.

Presentment to, at what place, 147 to 149; see *Presentment.*

ACCEPTOR *Supra Protest,* liability of, 190; remedy of, 191; proof in bankruptcy by, 326.

ACCIDENT, inevitable, excuses the presentment of a bill, 169, 270; whether it excuses want of notice of dishonor, 233; whether it excuses want of protest, 237.

ACCOMMODATION ACCEPTOR, giving time to, no discharge of drawer, 81; liable to holder, who took bill with notice of the accommodation, 83; when discharged by waiver, 84; whether discharged by indulgence to drawer, 89, and *note* 16; may have either a special action of assumpsit, or an action for money paid, 253; evidence in

ACCOMMODATION ACCEPTOR—*continued.*
action by, against drawer, 293; proof by, in bankruptcy, 328, 329.
ACCOMMODATION NOTE, maker of, not discharged by release to payee, 77, 90; indorser of, discharged by time given to maker, 74; does not pass to assignees of the party accommodated, 138; set-off in bankruptcy, 344.
ACCOMMODATION BILL. See *Consideration*, and *Accommodation Acceptor*. When it is considered to be issued, 36, 37; drawer of accommodation bill considered the principal debtor, 81; whether giving time to drawer of accommodation bill discharges the acceptor, 89; notice to drawer of, when not necessary, 221 to 228; see *Notice of Dishonor*; whether indorsee for value taking it after due, can recover on it, 112; holder for value can recover only to the amount of the value he has given, 104, 110; does not pass to the assignees of the party accommodated, 128; proveable, though no notice has been given, 321; proof of accommodation bill in bankruptcy, 327; by the party accommodating against the estate of the party accomodated, 328; proof in cases of accommodation bills deposited as security, 338.
ACCOUNT STATED, when bill or note may be given in evidence under such a count, 13, 255; where note avoided by a material alteration, may be given in evidence under, 33; infant cannot be sued on, 57.
ACKNOWLEDGMENT, to take a case out of the statute of limitations, must be in writing, 298.
ACT OF BANKRUPTCY; denial to holder of bill, 319. See *Bankruptcy*.
ACTION, form of, on bills and notes, 252; special assumpsit, 252; when debt will lie, 252; or *indebitatus assumpsit*, 252.
Common counts, 253; for money lent, when applicable, 253; for money paid, 253; for money had and received, 254; on an account stated, 255.
Counts on the consideration, 256; when proper, 256, 257; should be stated in particulars, 257.
By whom, 257.
Against whom, 257.
Affidavit to hold bail, 267.
Declaration, 262 to 272. See *Declaration*.
Inspection of the bill, 272.
Staying proceedings, 272.
Judgment by default, 273.
ADDRESS, see *Direction*.
ADMINISTRATOR. See *Executor*.
ADMISSION. See *Promise to pay*. Of handwriting by acceptor, precludes him from the defence of forgery, 83; by one

ADMISSION — *continued.*
of several partners, 279; what the acceptance admits, 280. 282. 285.; of indorser, only evidence in action against himself, 287; in notice to produce, 281; indorsement, admission of prior indorsements, 292; of former holder of bill, when admissible, 296, 297.
ADVICE, letter of, denoting the drawee, 141.
AFFIDAVIT, to hold to bail, form of, 259; stat. 7 & 8 Geo. 4. c. 71, 259; who may be bail, 261; in actions against married women, 261.
AGENT. See *Attorney*. How he should sign bill, 22; alteration of bill by, 40; how appointed, 44; cannot depute his authority, 45; extent of authority, 45; when personally responsible, 47, 171.; for the purpose of getting a bill paid, when liable on receipt of money, 93; usury by, in discounting bill, 117, 118; may transfer bill deposited with him, 126; liable for not presenting a bill for acceptance, 141; bill accepted by agent must be presented to him, the principal being absent, 147; acceptance of bill by, 170, 171; payment to whom good, 239, 240; not guilty of negligence in taking check from acceptor, 248; bill or note by, may be declared on as made by principal, 266; authority of, who proved, 279.
AGREEMENT, where bill or note operates as such, it must be treated as such, and stamped, 12; what amounts to, 13; admissibility of, to control operation of bill or note, 278; by one of several drawers, to provide for bill, operates as a release, 320.
ALIENS, when they may sue on bills or notes, 48: *semble*, not entitled to interest, 309.
ALTERATION, avoids a bill, though made by a stranger, 34; after negociation avoids a bill though made with consent, 34; before negotiation with consent, does not avoid bill, 36; what amounts to negotiation, 37; what alteration is material, 38; correction of mistake, 39; alteration a forgery, 374.
ANNUITY ACT, bankers' notes or checks not "money" within, 9.
APPROPRIATION, payment of bill or note by, 248; of bills to legal or illegal demands, 121.
ARREST, 259.
ASSUMPSIT. See *Money had and received, Money lent, &c.* Whether it lies against a corporation, 55; usual form of action on bills, 252.
ATTORNEY does not lose his privilege by drawing bill, 42. Attorney, employed to discover parties' residence, has, like a banker, a day to consult his employer, 235; notice of dishonor to, not sufficient, 199; payment to, 240; not good to his agent, 240; nor to his clerk, 240.

ATTORNEY—*continued.*
Power of, where it will authorise the attorney to accept bills, &c. 46, 67; whether it must be produced to prove agent's authority, 279. 171.

BAIL, of maker, who pays note, cannot sue on it, 258; affidavit to hold to bail, 259; who may be bail, 261.
BANKERS, where they hold bills deposited with them for value, 108, 109; what commission they may take on discounting bills, 120; may transfer bills deposited with them, 126; distinction between bankers' bills at sight and others, 144; within what hours bills must be presented to, 160; have the same time as fresh holder to give notice of dishonor, 210; notice of dishonor to, must be given in banking hours, 211; what they must prove in suing for the amount of a bill accepted at their house, and paid by them, 242; when they can recover money paid on forged checks and bills, 242, 243, 244, 245, 246, 247; cannot sue on a bill payable at their house, and paid by them, 258; within the bankrupt law, 318; in what cases bills deposited with them pass to their assigness in case of bankruptcy, 347 to 352.
BANKERS' CHECKS. See *Checks.*
BANKERS' NOTES governed by the same rules as other notes, 8; whether considered as cash, 8; not "money" within the annuity act, 9; under 5*l.* how affected by 7 Geo. 4. c. 6.—6; stamps on, compounded for, 9; *Appendix, No.* V.; may be issued by bankers, where more than six are in partnership, 51.
BANK NOTES under 5*l.* 6; treated as cash, 10; pass by will, bequeathing money or cash, 10; object of a donation, *mortis causa*, 10; whether money had and received will lie against the finder, 10; cannot be taken in execution, 10; tender of, not good if objected to, 10; forged bank note no payment, 100.
BANKRUPT. See *Bankruptcy.*
When he may sue on a bill, 48; cannot transfer bill after bankruptcy, 48. 127; liable on bill given after bankruptcy for debt due before, 49. 108; when a bankrupt partner may bind a solvent one, 68; liable on subsequent promise, 108; bills given to procure his certificate void, 114; may transfer bills which do not pass to his assignees, 127, 128; transfer of bill valid under 6 G. 4. c. 16. s. 82, 128; notice of dishonor to, before appointment of assignees, 199; payment of bills by, 239; payment of bills to, 240; may sue on bill, when, 48. 257.
BANKRUPTCY. See *Bankrupt.* Notice of dishonor, in case of, 229; a dissolution of partnership, 70; traffick-

BANKRUPTCY—*continued.*
ing in bills, what amounts to, 317; denial to holder an act of bankruptcy, 319; petitioning creditor's debt, amount of, 319; nature and time of accruing of, 319.
Proof of bills and notes. What bills may be proved, 321; only such as could be enforced at law or in equity, 322; bill on demand, 322; or after notice, 322; not unstamped or contingent bills, 323; not where the bankrupt's name is not on the bill, 323; proof on the consideration, 324; bills payable to fictitious payees, 324; lost bills, 324; where there has been laches, 325; bills barred by the statute of limitations, 325; time of the holders becoming party to, 325; not necessary that he should have been holder at the time of the bankruptcy, 325; bills indorsed for the accommodation of the bankrupt, and taken up by the indorser after the bankruptcy, 326; acceptances *supra protest*, 326.
Proof of bills—accommodation bills. Accommodation bill discounted by debtor of the estate not proveable, 327.
Proof of accommodation bills, by the party accommodating, against the estate of the party accommodated, 328.
Proof of bills—cross bills in general, 329.
Proof of bills—where there are cross bills, and a cash account, and both the parties become bankrupt, 331.
Proof of bills—under several commissions, and amount of proof, 335.
Proof of bills—where they have been deposited as a security, 339.
Proof of bills—reduction of proof, in case of one bill being paid in full, 341.
Proof of bills—interest, 341.
Proof of bills—expences and re-exchange, 342.
Proof of bills—election, 342.
Set off, 343.
Bills and notes of which the bankrupt is reputed owner, 347.
BASTARD, note given by father to parish illegal, 114.
BEARER, bill or note payable to, negotiable by delivery, 23. 27. 126; bills payable to fictitious persons may be treated as payable to bearer, 24; note payable to, is payable on demand within schedule, part I. 55 G. 3. c. 184.—28; loss of bill payable to, 241.
BELLMAN, sending letters by, 370.
BENEFICIAL interest in bill passes to assignees of bankrupt, 127.
BILLS OF EXCHANGE.
In general. Definition of, 1; Foreign bills, 2; see *Foreign bills.* Inland bills, 3.; see *Inland bills* under 20*s.*, 4; under 5*l.*, 5; bill of exchange, a simple contract, 11; a

BILLS of EXCHANGE—*continued.*
chose in action, 11; must be for payment of a specific sum, 12; must not be conditional or contingent, 12; either in time of payment, 13; or the fund for payment, 15; or the parties, 16; wording of bill, 17; whether certain instruments are bills or notes, 18.
The various parts of bills.—Drawer's name, 21; drawee's name, 22; payee's name, 22; date, 24; sum payable, 25; time and place of payment, 25; payable to order, 26; value received, 27.
Stamps on, 27; penalties in stamp act, 28; stamping after the making, 28; foreign bills, 29; bills bearing interest, 30; date and sight, 30; order for payment of money out of a fund, which may or may not be available, 31; consequences of want of stamp, 32; different denomination of stamp, 33; reissuing bills, 34.
Alteration of bills, 34; after negotiation avoids a bill, though made with consent, 34; before negotiation with consent does not avoid, 36; what is a negotiation or issuing, 37; what alteration is material, 38; correction of mistake, 39.
The parties to bills.—In general, 41; where the same persons are parties in different characters, 43; agents, 44; see *Agent.* Aliens, 48; bankrupts, 48; see *Bankrupt.* Corporations, 49; see *Corporation.* Executors and administrators, 55; see *Executors.* Infants, 56; see *Infants.* Lunatics, 57; married women, 58; see *Married Women.* Partners, 59; see *Partners.* Several persons not partners, 71.
Liability of parties to bills.—Of drawer, 73; see *Drawer.* How discharged, by indulgence, 74; by taking substituted bill or security, 77; by compounding with acceptor, 79; by holder making acceptor his executor, 80; not by time given to an accommodation acceptor, 81; not by receiving part payment from acceptor or indorser, 82; not by indulgence to acceptor with drawer's assent, or after promise to pay, 82; liability of acceptor, 83; see *Acceptor.* How discharged, by release, 84; by waiver, 84; by substituted bill or security, 87; whether by giving time to drawer of accommodation bill, 89; whether by neglect to present the bill for payment, 90; by discharge in a foreign country, 91; liability of drawee or other person in consequence of a promise to pay, 92; liability of of indorser, 94; liability of party transferring bill by delivery without indorsement, 95; liability of party delivering over bill by way of discount, 99; liability of party delivering over bill, how discharged, 100; liability of indorser, how discharged, by indulgence, 102.
Consideration of Bills; see *Consideration.*—Consideration is presumed, 103; want of consideration *in toto,* or in part,

BILLS of EXCHANGE—*continued.*
104; in cases of fraud, 107; what amounts to, 108; between what parties a defence, 111; illegal consideration, 112; at common law, 112; by statute, 114; whether it vitiates the bill in part or *in toto*, 115; defence, between what parties, 115; usury, 117; see *Usury*. To make usury there must be a loan, 117; usury in discounting, 118; commission not usurious, 120; renewed bills, when usurious, 120; between what parties usury will avoid a bill, 121; gaming, 122; notice to prove consideration, 123.

Transfer of Bills. See *Transfer*.—What bills are transferable, 125; by whom, 126; by banker, pledgee, or agent, 126, 127; by bankrupts, 127; in cases of fraudulent preference, 129, by executors or administrators, 129; by infants, 130; by married women, 130; by partners, 130; by a person who has no title himself, 130; at what time, 131; before the completion of the bill, 131; before due, but after refusal of acceptance, 131; before due, but after payment, 132; after due, 132; after due and after payment, 135; in what manner, 135; the words "or order," 136; blank indorsements, 137; indorsements in full, 137; restrictive indorsements, 138; for part of the money, 139; cancelling indorsements, 139.

Presentment of Bills.—For acceptance in general, 141; within what time, 142; how long the bill should be left for acceptance, 145; to whom presentment for acceptance should be made, 146; presentment for payment, 146; by whom, 146; to whom, 147; where, of a bill accepted generally, 147; of a bill accepted payable at a bankers, or other place only, and not otherwise, or elsewhere, 148; of a bill accepted, payable at a banker's, &c. since 1 & 2 G. 4. c. 78. not saying "there only," &c., 149; of a bill drawn, payable in London, &c., and accepted, payable at a banker's, &c., not saying "there only." &c., 149; of notes payable at a particular place in the margin, 150; of notes payable at a particular place in the body of the note, 151; of notes payable at two different places, 152; of bills payable after date, 152; of bills payable after sight, 154; of bills payable on demand, 154; of bills becoming due on Sunday, Christmas-day, Good Friday, or fast-day, 158; hours within which presentment must be made, 159; days of grace, 161; upon what bills, 163; at what time on the last day of grace a bill must be presented, 164; usance, 165; when presentment excused, 166; by part payment, or by subsequent promise to pay, 167; by inevitable accident, 169.

BILLS of EXCHANGE—*continued.*

Acceptance of Bills.—By whom, 170; at what time, 171; what amounts to a good acceptance not on the bill, 173; what is a good acceptance on the bill, 177; what acts, where there is no express acceptance or promise to accept, will amount to an acceptance, 178; special acceptance at a particular place, 181; conditional acceptance, 186; acceptance varying from the terms of the bill, 187; acceptance *supra protest*, 189; mode of, 190; liability of acceptor *supra protest*, 190; remedy of acceptor *supra protest*, 191; cancellation of acceptance, 192.

Notice of Dishonor. See *Notice.* When necessary in general, 195; form of the notice, 196; by whom, 197; to whom, in general, 198; to person guaranteeing the payment of a bill, 200; to person delivering over a bill without indorsement, 203; mode in which it should be given, 204; within what time, 207; within what hours, 211; protest of foreign bills, 212; within what time, 213; protest of inland bills, 214; protest for better security, 215; excused, by part payment, 216; by promise to pay, 216; only when the party knows of the laches, 219; in case the drawer has no effects in the hands of the drawee, 221; not excused where the drawer has effects in the hands of the drawee at the time of drawing, or any time before presentment, 222; not excused where the drawer has effects in the hands of the drawee, though to less amount than the bill, 223; not excused where, though there are no actual effects, there is a reasonable expectation of bill being honored, 224; not excused where, though the drawer has no effects in the hands of the drawee, he would have a remedy over, 227; not excused in an action against the indorser, because the drawer had no effects in the hands of the drawee, 228; not excused by the insolvency or bankruptcy of the drawee or other party, 229; whether excused in case of the known insolvency of the maker of a note, 231; not excused by an agreement not appearing on the face of the note, that it shall not be enforced, 232; whether excused in case of accident, 233; excused by ignorance of the party's residence, 234; protest, when excused, 236.

Payment of Bills. See *Payment.* By whom, 238; by bankrupts, 239; to whom, 239; to bankrupts, 240; in case of lost and stolen bills, &c. 240. See *Lost and Stolen Bills*, in cases of forgery, 242; within what time, 248; by taking a check from the acceptor, 248; by appropriation, 248; what amount, 249; the receipt, and getting back the bill, 249; supra protest, 250.

Remedy upon bills—form of action, 252; common counts,

BILLS OF EXCHANGE—*continued.*

253; counts on the consideration, 256; by whom, 257; against whom, 258; affidavit to hold to bail, 259; who may be bail, 261; in actions against married women, 261; declaration, 261; name, 261; statement of custom of merchants, and by force of the statute, 262; statement of the date, 262; of the place where the bill was made, 263; of the payee, place and time of payment, 263; of the sum payable, 264; of value received, 264; of the parties, 264; of the acceptance, 267; of the indorsements, 268; of the presentment, 268; of the notice, 271; of the promise, 271; inspection of the bill, 272; staying proceedings, 272; judgment by default, 273.

Evidence. See *Evidence.* Production of the bill, 275; variances, 275; identity, 277; admissibility of agreement to control the operation of the bill, 278; in particular actions, Payee v. Acceptor, 278; Indorsee v. Acceptor, 282 to 287; Payee v. Drawer, 287 to 292; Indorsee v. Indorser, 292; Accommodation Acceptor v. Drawer, 293; Payee v. Maker, 294; Indorsee v. Maker, 294.—Defence. Want of consideration, 295; statute of limitations, 297; competency of witnesses, 299; of drawer, 299; of indorser, 301; of acceptor, drawee or maker, 304.

Sum recoverable—principal, 306; interest, 309; when due, 309; for what period payable, 310; expences, 311; re-exchange, 312; damages, 315.

Bankruptcy. See *Bankruptcy.* Trading by trafficking in bills, 317; act of bankruptcy, denial to holder of bill, 319; petitioning creditor's debt, amount of, 319; nature and time of accruing of, 319; proof of bills and notes, what bills may be proved, 321; time of holder's becoming a party to, 323; of accommodation bills in general, 327; proof on accommodation bills by the party accommodating, against the party accommodated, 328; of cross bills in general, 329; where there are cross bills and a cash account, and both parties are bankrupt, 331; under several commissioners, and amount of proof, 335; where the bills have been deposited as a security, 339; where there are several bills, and one is paid in full, proof reduced, 341; proof of interest, 341; of expences and re-exchange, 342; election as to proving, 342; set off, 343; bills of which the bankrupt is reputed owner, 347.

Lost and Stolen Bills. See *Lost and Stolen Bills.* In what cases the loser can recover on the bill, 353; in what cases the drawer may be compelled to give another bill in case of loss, 356; what circumstances are proof of *bona fides* in receiving lost and stolen bills, &c. 356; between what parties it is a good defence that the bill has been lost or

BILLS OF EXCHANGE—*continued.*
stolen, 368; conduct to be pursued in case of loss or robbery of bill, 368; remedy against the postmaster or his servants for lost or stolen bills, &c. 369; who shall bear the loss of bills, &c. sent by the post, and lost, 369.
Forgery of bills and notes, enactments, 371; nature of the instrument, 372; alteration, 374; assuming fictitious name, 375; altering forged bill, 377; indictment, 378; evidence, 378.
BLANK for payee's name, 22. 29. 40; drawer liable on bill drawn in blank, 73; so an indorser, 45. 131; whether a person writing an acceptance on a blank bill is liable as acceptor, 172.
BLANK indorsement, 137. 284. 357.
BONA NOTABILIA, where bills are, 11.
BREACH, common breach sufficient, 268.
BROKER. See *Agent*. Where exorbitant brokerage amounts to usury, 117, 118.

CANCELLING, an indorsement, 139; an acceptance, 192; or check, 192.
CASH, whether bankers' notes amount to, 8; bank notes amount to, 9; checks considered as, 9; bills and notes when taken as such in payment, 97, 97.
CERTIFICATE of bankrupt, bills given to procure, void, 114.
CHECKS negotiable, and governed by same rules as bills, 9; intended for immediate payment, 9. 26; in practice considered as cash, 9; exempted from stamps, 9; delivery of, as a gift, good, if received in donor's lifetime, 11; are payable on demand, 26; do not require stamp when properly drawn, 32; taking check from agent of purchaser, does not discharge the latter, 97; when a check is overdue, 134; presentment for payment of, 157; marking a check equivalent to acceptance, 180; cancellation of, by mistake, 192; payment of lost check, 241; of forged check, 244; taking check from acceptor does not render agent doing so guilty of negligence, 248.
CHOSE IN ACTION, bill or note is, 11.
CHRISTMAS DAY, bills due on, when to be presented, 158.
CLEARING HOUSE, presentment at, equivalent to presentment at bankers, 149. 157.
COAL NOTES, 10; the stat. 3 G. 2. c. 26. s. 7. is repealed by 47 G. 3. st. 2. c. 68. s. 28. See *Errata*.
COGNOVIT, whether taking cognovit is a giving time, 74, 75.
COLLATERAL SECURITY, taking such from acceptor, no discharge of drawer, 78.
COMMISSION, by bankers on discounting bills, 120.
COMPETENCY of Witnesses, 299. 379. See *Witnesses*.

COMPOSITION, by bankers for stamps, 28; Appendix, No. 5; with acceptor discharges drawer, 80; with creditors, fraud in, avoids bill, 107.
COMPOUNDING a prosecution, an illegal consideration, 112.
COMPUTATION of Time in bills payable after date, 152, 153; in bills payable after sight, 154.
COMPUTING principal and interest, rule for, 273.
CONDITION, must not be in bill or note, 12; see *Contingency;* in acceptance should be expressed, 187.
CONDITIONAL Acceptance, 186, 187. 195. See *Acceptance.*
CONSIDERATION, *general points relating to,* need not be mentioned in bill or note, 27; of a bill or note will sustain action when the bill is wrongly stamped, 33; acceptance imports consideration, 85; consideration is presumed, 183.
Want of consideration, 104; is either *in toto* or in part, 104; no consideration in cases of fraud, 105; want of consideration in part an answer only when the sum is matter of definite computation, 105; in cases of fraud, 107.
Want of consideration—what amounts to, debt of a third person, a sufficient consideration, 108; so a moral obligation, 108; where bankers hold bills, deposited with them for value, 108, 109; where bill is delivered for special purpose, the party receiving it cannot repudiate the purpose, and sue on it himself, 109; where a bill or note is delivered as a gift, 110.
Want of consideration—between what parties a defence, 111; not where the holder or any intermediate party took the bill or note on a valid consideration, 111; no difference that party so taking it knew it was an accommodation bill, 111; whether indorsee for value taking bill after it is due, from a person who gave no value, can sue upon it, 112; and *note* 19.
Illegality of consideration, 112; at common law, 112; by statute, 114.
Illegality of consideration—whether it vitiates in part or in *toto,* 115.
Illegality of consideration—defence, between what parties, 115; bill declared void, cannot be enforced so as to give effect to the illegal transaction, 115; *aliter* if it does not give effect, 115; where not declared void, may be enforced against any party by innocent indorsee for value, 115, 116, unless he takes the bill after it is due, 116; or knows of the illegality, 116.
Usurious consideration, 117. See *Usury.*
Renewed bills, where valid, 120.

CONSIDERATION—*continued*
Gaming consideration, 122;
Notice to prove consideration, 123.
Counts on the consideration, 256.
Evidence of want of consideration, 295.
CONSTRUCTIVE acceptances, 180.
CONTRACT. See *Consideration, Illegality, Usury.*
COPY. See *Notice to produce, Inspection.*
CONSIGNMENT of cargo equivalent to effects in hands of drawer, 224, 225.
CONTINGENCY, must not be in a bill or note, 12; either in time of payment, 13; in the fund, 15; or in the parties, 16; prevents proof in bankruptcy, 323.
CONTRACT, with aliens invalid, 48; with infants voidable, 56; with married women void, 58.
CORPORATIONS, exceeding six persons, whether they may be parties to bills, 49, 50, 51; whether assumpsit lies against them, 54; whether they have authority to become parties to bills, 55;
COSTS, practice as to, on staying proceedings, 272; liability for when it renders witness incompetent, 300, 301. 305.
COUNTERMAND of appropriation of money, 93, 94.
CROSS BILLS, proof of a bankruptcy, 329 to 335. See *Bankruptcy.*
CURRENCY, 264.
CUSTOM of merchants, need not be stated in declaration, 262.

DAMAGES, plaintiff entitled to nominal damages on writ of inquiry, unless the bill is produced, 273; what damages allowed in case of foreign bills, 311—315.
DATE, of bill or note, 24, 25; when it must not be printed, 25; when evidence, 25; meaning of word "date" in stamp act, 30; alteration of, in case of mistake, 35; alteration in, material, 35. 38; how stated in declaration, 262.
DAYS of grace, in general, 161; in different countries, 161, 162: upon what bills, 163, 164; at what time on the last day of grace a bill must be presented, 164. 153.
DEATH, note payable on good, 16; bill indorsed to party after his death, vests in executor, when, 56; a dissolution of copartnership, 70; of one of several parners who has drawn a bill in blank, 131; presentment in case of, 146, 147; notice of dishonor, in case of, 199, *note* 44; whether after death of drawer, drawee may accept, 381.
DEBT, action of, maintainable by payee against maker of note for value received, 27. 252; so by drawer, who is also payee of bill for value received, 27. 253; by indorsee against immediate indorser, 253.

DECLARATION *in general*, 261; the venue, 261; statement of "usage and custom of merchants," and "according to the form of the statute," 262; statement of the date, 262; of the place at which the bill or note was made, 263; of the payee, time and place of payment, 263; of the sum payable, 264; of value received, 264; of the parties, 264; *See the Forms in the Appendix.*

DEFACING a bill by drawee, whether on acceptance, 178, 179.

DEFAULT, Judgment by, 273.

DEFENCE, in actions on bills, evidence in, 295. See *Consideration.*

DEFINITION, of a bill, 1; of a note, 3.

DELIVERY, transfer by, 99; necessary to perfect indorsement, 136; of all the bills of a set, 136; entitles a party to indorsement, 136; delivery up of bill, 250; averment of delivery to payee unnecessary, 267.

DEMAND, not necessary to shew demand on drawer in action against indorser, 199; not necessary to aver it in actions on bill or notes, payable on demand, 269.

DEMAND, BILLS ON, where no time is mentioned, bill is payable on demand, 25; when considered to be overdue, 134; bills on, when to be presented, 154; bill accepted after it is due, becomes payable on demand, 172; statute of limitations, 298; proof of, in bankruptcy, 322.

DENOMINATION of Stamp, 33.

DESTRUCTION of bill, whether it amounts to acceptance, 179; notice of dishonor, not excused by, 369.

DIRECTION of bill to a place only, and to no person, 22; alteration in, 39. See *Drawee.*

DISCHARGE. See *Release, Waiver.*

DISCOUNT, of bill by agent, 45; by one partner in his own name, does not make the partnership liable, 59, 60; liability of party delivering over bill by way of discount, 99; what amounts to usury in discounting, 117, 118, 119; proof of bills discounted, 322, 323; discounting bills does not make the party a scrivener within the bankrupt law, 318; reduction of proof in bankruptcy on payment in full of one of several bills discounted, 341.

DISHONOR. See *Notice of dishonor.*

DISPENSATION with notice, by party entitled to it, 235, 236.

DISSOLUTION of partnership, what amounts to, 68, 69, 70; notice of, 68, 69.

DIVIDENDS, receipt of, in case of cross bills, 331; when it will take a case out of the statute of limitations, 299.

DONATION, *mortis causâ*, 11, 12.

DRAFT, See *Check.*

DRAWEE, his name should appear on the bill, 22; but where a bill is directed to a particular house, the person

DRAWEE—*continued*
residing there may accept, 22; bill directed to A. or in his absence to B., 22; all the names should appear, 22; effect of word "at" before his name, 19, 22; when liable on a forged acceptance, 83; when liable in consequence of promise to pay, 92; when no drawee is mentioned, but there is letter of advice, 141; presentment of bill to, for acceptance, 145; days of grace allowed to, 161; whether defacing a bill by, operates as an acceptance, 178; whether retaining a bill operates as an acceptance, 178, 179; when guilty of negligence in paying forged bill, 242; may accept for part, 249; evidence of identity of drawee and drawer, 277; competency of, 304; whether drawee may accept after death of drawer, 381.

DRAWER, *general points relating to;* only liable in default of acceptor, 2; indorser becomes new drawer, 2; may draw bill on himself, 20, 43; name of, must appear on bill, 21; whether a fictitious bill can be considered as payable to drawer's own order, 24; value received in bill payable to third person, means value received by drawer, 27; may re-issue bill payable to his own order without stamp, 28, 34; making acceptor executor, a discharge, 80; giving time to accommodation acceptor no discharge, 81; nor to acceptor who is agent of drawer, 81; nor is receiving part payment from acceptor or indorser a discharge, 82; waiver of notice by promise to pay, or part payment, 216, 217; of bill payable to the order of a third person, may sue the acceptor, 257; staying proceedings in actions against, 272; competency of, 299; when compellable to give another bill in case of loss, 356; death of, whether it is a revocation of request to drawer to accept, 381.

Liability of, 73; for re-exchange, 73; for interest, 73. 310; to be sued immediately on dishonor, 73; by drawing a bill in blank, 73; liability as for a present debt, 73.

How discharged—by holder giving time to other parties, 74; but not by proposal to give time, 74; whether discharged by taking cognovit, or warrant of attorney, 74, 75; what amounts to giving time, 75; varying the liability of acceptor, 76; giving time no discharge where it is *nudum pactum*, 76; giving time to acceptor after judgment no discharge, 77; taking substituted bill from acceptor a discharge, 77; unless it be merely a collateral security, 78; taking the separate notes of one of several drawers, whether a discharge of the rest, 79; proving under acceptor's commission no discharge, 79; *aliter* compounding with acceptor, 80: whether discharged by holder taking a special acceptance, 391.

DURESS, action on bill given under 117, and *note* 20.

EFFECTS, want of, see *Notice of dishonor*; excuses want of protest, 214; excuses notice in what cases, 221 to 229. See *Notice of dishonor*; want of, whether evidence under the general averment of presentment, 271.

ELECTION, as to proof on bankruptcy, 342.

EQUITY, will restrain one partner from negotiating bills in the name of the firm, 63; where a bankrupt will be ordered to indorse a bill, 128; will interfere in case of lost bill, 356.

EVIDENCE, *general points relating to*; unstamped bill or note may be inspected for collateral purposes, 33; so to shew terms on which money has been lent, 34; of usage and custom of merchants, when admissible, 71. 126; when bills and notes may be given in evidence under the common counts, 253; of presentment in general, 270. 271; production of the bill or note, 275; variances, 275; identity, 277; admissibility of agreement to control operation of bill or note, 278; of putting letter into post, 206.

In particular actions, payee v. acceptor, 278; indorsee v. acceptor, 282 to 287; payee v. drawer, 287 to 292; indorsee v. indorser, 292; accommodation acceptor v. drawer, 293; payee v. maker, 294; indorsee v. maker, 294; indorsee v. indorser of note, 294.

Defence, want of consideration, 295; statute of limitations, 297.

Competency of witnesses, of drawer, 299; of indorser, 301; of acceptor, drawee, or maker, 304; in cases of forgery, 379.

Evidence on prosecutions for forgery, 378.

EXCHANGE. See *Re-exchange*.

EXCHANGE OF ACCEPTANCES, amounts to an issuing, 37; a valuable consideration, 110. 226; of bills without indorsement, 99; not sufficient to support commission of bankrupt, 320; proof in bankruptcy in case of, 330.

EXCHEQUER BILL, passes by delivery, 126; receipts for, exempted from stamp, 249.

EXCISE BILL, days of grace on, 164; excise prosecutions, compounding when not illegal, 113.

EXECUTION, bank notes cannot be taken in, 10; nor bill or note, 12; taking party to bill in execution, no discharge of other parties, 76; against one of the makers of joint and several note, no discharge to the others, 82.

EXECUTOR, interest in bill or note vests in, 55; becomes personally liable by making or indorsing a note, 55; continuing share in firm liable as partner, 55; bill indorsed to testator after his death vests in, 56; holder making acceptor executor, discharges drawer, 81; present-

EXECUTOR—*continued.*
ment of bill by and to, 146, 147; notice of dishonor to, 199; payment to, 239; promise by, taking the case out of the statute of limitations, 298, 299.
EXPENSES of special messenger in sending notice of dishonor, 207; what recoverable in case of dishonor, 311; proof of in bankruptcy, 342.

FAIRS, bills made payable at, 15, *note* 5.
FAST-DAY, bill due on, when to be presented, 158; notice of dishonor on, 211.
FEME COVERT. See *Married Woman.*
FICTITIOUS NAMES, effect of, 24; where drawer and acceptor are fictitious, notice must still be given to indorser, 196; proof of fictitious bills, 324; forgery by use of, 375.
FORBEARANCE TO SUE, is not indulgence, 76. See *Indulgence.*
FOREIGN BILLS, definition of, 2; when they require stamps, 29; days of grace on, 163; parol acceptance of, good, 173; protest of, 212. 236; see *Protest;* payment of, at what time, 248; damages in case of, 311.
FOREIGN COIN, 249; *note* 54.
FOREIGN DISCHARGE, when valid, 91. 92.
FOREIGN LANGUAGE, bill in, 261.
FOREIGN LAWS, whether the courts will take notice of foreign revenue laws, 30.
FOREIGN MONEY. See *Re-exchange.*
FOREIGN NOTES, within the stat. 3 & 4 Anne, 4.
FORGERY, *in general.* Liability of party paying by a forged bill, 100; payment on, when good, 242, *et seq.;* when acceptor is precluded from setting up forgery of drawer's name, 280; or his own, 281, 282.
Indictment for, enactments, 371; nature of the instrument, 372; alteration a forgery, 374; assumption of fictitious name, 375; uttering forged bills, 377; form of indictment, 378; evidence, 378; competency of witnesses, 379.
FORMS. See *Appendix.*
FORM OF BILLS AND NOTES, 17.
FRAUD, in one partner drawing, &c. a bill to bind the firm, 61 to 67; in consideration of bill avoids it, 105. 107; bills fraudulently obtained do not pass to holders assignees, 128; fraudulent preference what amounts to, 129;
FRAUDS statute of, whether bills of exchange are within it, 108 and *note* 18;
FRAUDULENT PREFERENCE, 129.
FREIGHT payment of, by bill, when a discharge, 98, 99.

GAZETTE, notice of dissolution of partnership in, 68, 69;
GAMING, bills given for gaming debts illegal, 122; indorsee cannot sue any party so as to give effect to the illegal transaction, 123; but he may sue his indorser, 123.
GIFT, check delivered as, good, if received in donor's lifetime, 11, 12; bill or note delivered as, 110.
GIVING TIME. See *Indulgence, Liability of Parties.*
GOOD FRIDAY, bills due on, when to be presented, 158; notice of dishonor on, 211.
GRACE, days of, 161; see *Days of Grace.*
GUARANTEE, see *Surety;* party not putting his name on bill, but guaranteeing it is not liable on the bill, 42; in what cases a person guaranteeing a bill is entitled to notice of dishonor, 200, 201, 202; whether an indorser guarantees the genuineness of other indorsements, 293, and *note* 53.
GUARDIAN, payment to, 239.

HANDWRITING, averment of "own handwriting," 266; how proved, 278. See *Admission, Evidence.*
HOLDER; see *Indorsee for value;* may insert his own name where blank is left for the payee, 22; not putting his name on bill is not liable upon it, 42; where bound by the act of his agent in getting bill discounted, 45; what amounts to indulgence by, 75; see *Indulgence;* release by, no answer to action by indorsee for value without notice, 84; neglect of, may discharge acceptor, 84; of note, must give notice of dishonor, though maker insolvent, 101; of note, payable to the bearer, is considered a party, 101; whether he can refuse acceptance *supra protest,* 189; whether notice of dishonor must come from, 197; when entitled to sue acceptor on lost bill, 241; bound, on payment, to deliver up the bill, 250; what parties he may sue, 258, 259; generally entitled to recover interest, 309.
HONOR. See *Acceptance supra protest; Payment supra protest. Protest.*
HOLIDAY. See *Days of Grace; Sunday; Christmas day.*
HUSBAND. See *Married Woman.*

IDENTITY, evidence of, 277.
IGNORANCE of law, does not prevent a promise to pay being a waiver of indulgence, 83; or of notice, 220; ignorance of party's residence excuse for want of notice, 234.
ILLEGALITY of consideration, 112; at common law, 112; by statute, 114; defence between what parties, 115; whether it vitiates in part or in *toto,* 115; see *Usury,*

ILLEGALITY—*continued.*
Gaming, and *Consideration*; prevents the proof of bills, 322.
INDEMNITY, in case of lost bill, 356.
INDIA, expenses allowed on return of Indian bills, 313.
INDICTMENT, in case of forgery, 378.
INDORSEE for value, may sue partnership on bill accepted by one partner after act of bankruptcy committed by him, 49; may sue on bill made by more than six in partnership, 50; may recover on bill accepted by one partner in fraud of the others, 61. 66. 68; may recover on accommodation bill, though he had notice of the accommodation, 111; whether he can, where he takes the bill *after due* from one who did not hold for value, 112, and *Note* 19; may sue on an illegal bill void by statute, if it does not give effect to the illegal transaction, 115; where the note is not declared to be void by statute, he may sue any of the parties, if he had no notice of the illegality, 116; *aliter* if he had notice, 116; may recover on usurious bill, 122; may sue his indorser, though bill not negotiable, 126; may sue on bill dishonored for non-acceptance, 131, 195; evidence in action by indorsee v. acceptor, 282 to 286; in action by indorsee v. indorser, 292; by indorsee v. indorser of note, 294.
INDORSER of a bill in the situation of a new drawer, 2; indorser of a note resembles the drawer of a bill, 3; of accommodation note discharged by time given to maker, 74; liability of, 94; may be sued immediately on dishonor, 95; whether bill negotiable or not, is liable to his immediate indorsee, 95; how discharged by indulgence, 102; not by indulgence to subsequent party, 102; waiver of notice to by part payment or promise to pay, 216, 217. 221; entitled to notice, though drawer has no effects in the hands of drawee, 228, 229; may recover money paid under mistake of fact, 247; taking up bill and suing ought to produce protest and receipt, 250; evidence of identity of, 277; admission of, when evidence, 287; competency of, 301.
INDORSEMENT, *in general*, is a new drawing, 2. 95; implies a consideration, 104; by one partner in fraud of the others, 61. 63; usurious indorsement, 121, 122; statement of in declaration, 268; where it is admitted, 282. 286; mode of proof of, 285.
What bills may be indorsed, 125.
By whom—in general, 126; by person of same name as payee, 126; by trustee, 126; by several persons not partners, 126; after suit the holder cannot transfer with notice, 126.
By whom—banker, pledgee, or agent, 126; may in general

INDORSEMENT—*continued.*
transfer bill deposited with him to third person without notice, 126, 127; or pledge bill, 127.
By whom—bankrupts, 127; cannot transfer bill after act of bankruptcy, 127; unless the bill does not pass to his assignees, 127, 128; transfer, good under 6 G. 4. c. 16. s. 82., 128.
By whom—bankrupt, fraudulent preference, what amounts to, 129.
By whom—executors and administrators, 129.
By whom—infants, 130.
By whom—married women, 130.
By whom—partners, 130.
By whom—by a person who has no title himself, 130.
At what time—before the completion or date of the bill, 131; person indorsing a bill before it is filled up is liable, 131; and one of several partners so drawing and indorsing a bill and dying, the firm are liable, 131; post-dated bill may be indorsed before the day of the date, 131; *aliter* of bills under 5*l.*, 131.
At what time—before due, but after refusal of acceptance, 131; indorsee may sue on such bill provided he had no notice of the dishonor, 131.
At what time—before due, but after payment, 132; indorsee may sue if he had no notice of the payment, 132.
At what time—after due, 132; person taking such bill stands in the place of his indorser, 133; whether an indorser for value, taking it from one who did not hold for value after due, can sue, 112, 133; a person who held the bill before it was due, and takes it again after due, is remitted to his former right, 134; entries in the books of the indorser, made at the time of the indorsement to the plaintiff, evidence for the defendant, 134; at what time a bill or note payable on demand is overdue, 134, 135.
At what time—after due and after payment, 135; bill payable to third person, taken up and paid by drawer, cannot be reissued, 135; *aliter* if payable to drawer himself, 135.
In what manner, 135; by indorsement or delivery, 135; no particular words necessary, 135; promise to indorse not sufficient, 135; on the face of the bill sufficient, 135; in pencil sufficient, 136; private mark not sufficient, 136; testamentary indorsement, what amounts to, 136; indorsement of bills under 5*l.*, 136; delivery necessary, 136; delivery entitles party to indorsement, 136; each part of a bill drawn in sets should be delivered, 136.
In what manner—the words "or order," 136; necessity and effect of these words, 136.
In what manner—blank indorsement, 137; makes the bill transferable by delivery, 137; indorsee may state himself

INDORSEMENT—*continued.*
to be the immediate indorsee of any one who has indorsed in blank, 137.
In what manner—indorsement in full, 137; stops the negotiability, 137, 138.
In what manner—restrictive indorsements, 138; effect of restrictive indorsements, 138; person taking bill under parol agreement not to sue the indorser, cannot sue him, 138.
In what manner—of part of the money, 139; not good unless the rest has been paid, 139.
Cancelling an indorsement by mistake will not hurt, 139.
INDULGENCE, when drawer is discharged by, 74; or maker of note, 74; what amounts to, 75; not a mere *nudum pactum*, 76; taking substituted bill or collateral security, 77, 78; taking the separate notes of one of several drawers, 79; proving under acceptor's commission no discharge, 79; *aliter* compounding with him, 80; indulgence to accommodation acceptor, no discharge of drawer, 81; indulgence no discharge, if assented to by party, or if with knowledge he promises to pay, 82; indulgence to principal discharges surety who has signed joint and several note, 88; whether indulgence to drawer of accommodation bill discharges acceptor, 89, and *Note* 16; where indorser is discharged by indulgence, 102.
INFANT, his contract voidable only, 56; cannot be sued as drawer of bill, 56; when drawer and payee of a bill, indorsee may sue acceptor, 56; liable upon acceptance after full age, of bill drawn before, 56; or upon promise after full age, to pay debts contracted before, 56; may be payee or indorsee, 57; cannot, it seems, bind himself by bill for necessaries, 57; or by stating an account, 57; payment to, 239; may sue on bill, 257.
INLAND BILLS; see *Bills of Exchange*; definition of, 3; acceptance of must be in writing on the bill, 173; protest of, 214; see *Protest*.
INQUIRY, writ of, when necessary, 273.
INSOLVENCY, no excuse for not giving notice of dishonor, 229. 231.
INSOLVENT ACT, discharge of party under, does not discharge other parties to bill, 76.
INSOLVENT NOTES, 11.
INSPECTION of bills and notes, 272.
INSTALMENTS, notes payable by, debt will not lie on, till all the instalments are due, 253.
INTEREST, makes no difference in the stamp, 30; drawer liable for, from what time, 73; acceptor liable for, 83; when due, 309; for what period payable, 310; is in the nature of damages, and cannot be added to bill to make up petitioning creditor's debt, 319; proof of in bankruptcy, 341.

I. O. U. not a promissory note, 18.
IRISH bill does not require an English stamp, 29.
IRISH certificate, no bar to debt contracted here, 92.
IRISH currency, 264.
ISSUING of bill or note, what amounts to, 37.
JEW not compelled to give notice of dishonor on day of religious festival, 211.
JOINT or several, when a note is, 18. 71; how declared on, 265.
JUDGMENT, giving time to acceptor after judgment, no discharge of drawer, 77; judgment and levying under *fi. fa.* against one of the makers of a joint and several note, no discharge to others, 82; by default, 273.

LACHES. See *Notice of dishonor, Indulgence, Presentment.*
LEAP YEAR, computation in case of, 153.
LIABILITY of parties to bills of drawer, 73; see *Drawer;* of acceptor, 83; see *Acceptor;* of drawee or other person, in consequence of promise to pay, 92; see *Drawee;* of indorser, 94; see *Indorser;* of party transferring bill without indorsement, 95; how discharged, 100.
LIMITATIONS, statute of, 297 to 299.
LORDS' ACT, notes given under, 11; discharge under does not operate as a discharge of other parties, 76.
LOST AND STOLEN BILLS AND NOTES; in what cases the loser may recover on the bill, 353; where the bill is generally indorsed he cannot, 353; whether he can recover on half bank notes, 354; where bill is specially indorsed, loser may sue, 355, 356; whether where the bill is lost after due, 355, 356.
In what case drawer may be compelled to give another bill in case of loss, stat. 9 & 10 W. 3., 356; remedy is in equity, 356; proof on lost bill in equity, 356.
What circumstances are proof of bona fides; statement of cases in which the circumstances have been held to show *bona fides,* 357 to 360; statement of the cases in which the circumstances have not been held sufficient to shew *bona fides,* 360 to 368.
Between what parties it is a good defence that the bill has been lost or stolen, 368.
Conduct to be pursued in case of loss or robbery of bills, 368.
Remedy against the postmaster or his servants for lost or stolen bills, 369.
Who shall bear the loss in case of bills, &c. sent by post, and lost, 369.
LUNATIC cannot be sued on bill or note, 57.

MAKER of Note, resembles acceptor of bill, 3; his name

MAKER of note—*continued.*
need not be subscribed, sufficient if it appear in any part of note, 22; not discharged by release of payee, 77; though an accommodation note, 77. 90; if surety, discharged by composition with principal, 88; giving time to, discharges indorser, 74; notice of dishonor to, unnecessary, 200; insolvency of, no excuse for not giving notice of dishonor to the indorser, 231; competency of, 304.
MARGIN, note payable at a particular place in, 150.
MARRIED WOMAN, her contracts void, 58; her indorsement transfers nothing, 58; unless consent of husband be presumed, 58; or unless she can be considered as a feme sole, 58; note indorsed to, vests in husband, 58; so if indorsed to her *dum sola*, 58; remedy in equity on note given by, 58; payment of bill given to, 239; when she may be held to bail, 261.
MEMORANDUM, as to place of payment at foot of note, 26. 150; at the foot of bill, 184; when admissible to control operation of bill, 278.
MISNOMER of parties to suit, 265.
MISTAKE, in name of payee, 23; in date of bill, 25. 40; in omission of words "or order," 27; correction of does not avoid bill, 39; money paid under mistake of fact recoverable, 247.
MONEY; see *Cash*; bill or note must be for payment of, 12.
MONEY HAD AND RECEIVED, against a drawee or other person who has promised to pay a bill on receiving funds, 92. 94; to recover money paid under mistake of fact, 248; when bill or note may be given in evidence under this count, 254.
MONEY LENT, count for, may be maintained where money has been lent and bill given, which is avoided by alteration, and bill is evidence to shew the terms, 34; partnership liable for, where one of several partners has given bill in his own name, 60; when bill or note may be given in evidence under this count, 253.
MONEY PAID, action for, by party who pays *supra* protest, 251; when bill or note may be given in evidence under this count, 252.
MORAL OBLIGATION sufficient consideration, 108.
MUTUAL CREDIT in bankruptcy, 343.

NEGLIGENCE in paying forged bills, 242; in taking lost or stolen bills; see *Lost and Stolen Bills*; in not giving notice of loss, 365, 366. 368; in postmaster or his servants, 369.
NEGOTIABILITY of bills and notes, 23. 125. 136; see *Indorsement* and *Transfer*; bill negotiable till paid by ac-

NEGOTIABILITY of bills—*continued.*
ceptor, 135; effect of special indorsement on, 137; of restrictive indorsement, 138.
NEGOTIATION, what amounts to, so as to render subsequent alteration an avoiding of the bill, 36, 37.
NON-ACCEPTANCE and Non-payment. See *Presentment, Notice of Dishonor.*
NOTARY. See *Protest.*
NOTICE of dissolution of partnership, where necessary, and how given, 68, 69.
NOTICE to prove consideration of bill, where necessary, 123.
NOTICE of conditional acceptance, and of partial acceptance, 249.
NOTICE of indorsement unnecessary, 268.
NOTICE, to produce, 275; effect of as an admission, 281; whether necessary in case of notice of dishonor, 289, 290, 291.
NOTICE of bills being lost, 365, 366. 368.
NOTICE of dishonor, *when necessary in general*, 195.; of non acceptance, 195; of conditional acceptance, 195; not necessary for defendant to shew that he has been prejudiced, in order to make want of notice a discharge, 195; not necessary to give notice of directions from the acceptor to forbid payment, 196; a second notice unnecessary, 196; where drawer and acceptor are fictitious persons, notice still necessary, 196; effect of want of notice where acceptance is refused, but the bill is accepted afterwards, *note* 41; in case of bill which has been destroyed, 369.
Form of the notice, 196; must apprise the party of the fact of dishonor, 196.
By whom, 197; formerly held it must come from the holder, 197; sufficient now, if from a party to the bill, 197, 198; whether from acceptor sufficient, 198.
To whom in general, 198; sufficient to the party intended to be sued, 199; in case of death to personal representative, 199; in case of bankruptcy to bankrupt before appointment of assignees, 199; where a party is abroad, to his wife at his dwelling house in England, 199; demand upon drawer not necessary in action against indorser, 199; to one partner notice to all, 199; *notes* 45 *and* 46; to attorney not sufficient, 199; dispensed with by party undertaking to make enquiries himself, 199; notice to acceptor or maker unnecessary, 199, 200.
To whom, person guaranteeing the payment of a bill, 200, 201, 202.
To whom, person delivering over a bill without indorsement, 203, 204.
Mode in which it should be given, 204; verbal notice suffi-

NOTICE of dishonor—*continued.*
cient, 204; delivery at counting house within usual hours of business sufficient, 205; sending by post sufficient, 205; but the letter must be properly addressed, 206; and the putting into the post clearly proved, 206; notice by the two-penny post sufficient, 206; letter containing notice ought not to be delivered to the bellman, 206; not necessary to send by the post, 207; expenses of special messenger, when necessary, allowed, 207.
Within what time, 207; whether in time, a mixed question of law and fact, 207, *note* 48; may be given on day of dishonor, 207; when the parties reside in same town, notice must be given before the end of the day next after receiving it, 208; when not in the same town, by the post of the next day after the day of receiving it, 208, 209; or if there is no post on that day, by the post of the following day, 209; banker holding bill for the purpose of presenting it has the same time as a distinct holder, 210; not enough where there are several indorsees, that the drawer or an indorser receives notice in as many days as there are subsequent indorsees, if there has been laches in any intermediate notice, 210; in case of Sunday, Christmas-day, Good Friday, and Fast-day, 211; Jewish festival, 211.
Within what hours, 211; to banker within banking hours, 211.
Protest of foreign bills, 212, 213. See *Protest.*
Protest of inland bills, 214. See *Protest.*
Protest for better security, 215. See *Protest.*
Notice excused by part payment, 216; with notice of the fact of dishonor, 216.
Excused by promise to pay, 216; even where made by drawer after an act of bankruptcy, 217; the promise must be unequivocal, 217; and if conditional, the condition must be complied with, 217; promise not to the plaintiff, but to another party to the bill, sufficient, 218; recital in an agreement sufficient, 218; the whole of the promise must be taken together, 218, 219.
Excused by part payment, or promise to pay—only where the party knows of the laches, 219; in cases of refusal of acceptance there must be actual knowledge of the fact of dishonor, 219; but in cases of refusal of payment no actual knowledge need be proved, 219, 220; the party making the promise need not know that he is discharged by law, 220; a mere acknowledgment by an indorser not sufficient, 221.
Excused in case the drawer has no effects in the hands of the drawee, 221; so protest is excused, 222; but the drawer who has no effects, but has deposited money in the hands

NOTICE of dishonor—*continued.*
of two of the indorsers to answer the bill, is entitled to notice, 222.
Not excused where the drawer has effects in the hands of the drawee at the time of drawing, or at any time before presentment, 222.
Not excused where the drawer has effects in the hands of the drawee, though to less amount than the bill, 223.
Not excused where, though there are no actual effects, there is a reasonable expectation of the bill being honored, 224; as where a cargo has been consigned, 224, 225; though the drawer is indebted to the drawee in a larger amount, 225; but notice is excused where the drawee has bought goods of the drawer, which are not to be paid for till after the bill is due, 226; delivery of cross acceptances equivalent to effects, 226.
Not excused where, though the drawer has no effects in the hands of the drawee, he would have a remedy over, 227; or where, being an accommodation party, he would have an action against him whom he had accommodated, 227, 228.
Not excused in an action against the indorser, because the drawer had no effects in the hands of the drawee, 228, 229.
Not excused by the insolvency or bankruptcy of the drawee or other party, 229; understanding between the drawer and acceptor, that the former shall provide for the bill, no excuse of notice, 229; nor that indorser of note desired person, at whose house it was payable, to send it to him and he would pay it, 229; no excuse that acceptor was insolvent, 229; bankruptcy of drawer or indorser no excuse for not giving notice to them or their assignees, 230, 231.
Whether excused in case of the known insolvency of the maker of a note, 231; *semble* not, 232.
Not excused by an agreement not appearing on the face of the note that it shall not be enforced, 232.
Whether excused in case of accident, 233, 234.
Excused by ignorance of party's residence, 234; but due enquiry must be made, 234; what amounts to due enquiry, 234, 235; excused by the party's dispensing with the notice, 235, 236.
Protest, when excused, 236; see *Protest*, and *note* 52.
Statement of notice in declaration, 271.
Service of, how proved, 288.
Contents of, how proved, 289.
Time of service of, how proved, 291.
NOTING a bill, whether sufficient, 213; *Note* 56.
NUDUM PACTUM, 76. 110.

OFFICES, bills given on sale of, void, 114.

ORDER, words "or order" not necessary to make a note, but necessary to make a *negotiable* note, 23. 26, 27; not necessary in order to make indorser liable to his immediate indorsee, 95. 126; not necessary to be stated in indorsement, 136; insertion of in bill a material alteration, 39; where bill is payable "to the order of A. B.," it may be stated to be payable to him, 263; not necessary to aver that he has made no order, 263.

ORDER, for payment of money out of a fund, which may or may not be available, requires a stamp, 31.

PAROL evidence not admissable to control operation of bill, 278: parol acceptance of bill, 173.

PARTICULAR transactions, partners in, when one can bind the rest, 70.

PARTICULARS of demand, should state consideration of the bill when it is relied on, 257.

PARTIES to bill, in general, 41; see *Agent, Aliens, Bankrupts, Corporations, Executors, Infants, Lunatics, Married Women, Partners;* persons becoming parties collaterally, 42; names of, must appear on the bill, 42; same persons parties in different characters, 43; statement of the parties in the declaration, 264; misnomer of, 265.

PARTNERS, cannot sue other parties to the bill, amongst whom is one of the partners, 44: one may bind the rest, 59; how they may become parties to bills, 59; not bound on bill discounted by one of them in his own name, though proceeds applied to the use of the partnership, 59, 60; general rules as to power of one to bind the rest by drawing, &c. for his own use, 60; in what cases one cannot bind his co-partners by pledging the credit of the firm for his separate debt, 61; in what cases he may, 63; he cannot, where the party taking the bill knew that the other partners had given notice that they would not be bound by such transactions, 66; power to bind, the firm ceases on dissolution, 67; but after dissolution firm may be bound, if they hold themselves out as partners, 67, 68; how notice of dissolution should be given, 68; committing an act of bankruptcy a dissolution, 70; death a dissolution, 70; partners in particular transactions, 70; several persons parties to a bill, but not partners, 71; notice of dishonor to one partner notice to all, 199; *notes*, 45, 46; payment to one of several, good, 239; who must join in suing on bills, 257; proof of their signature on bills, 279; effect of admissions by one, 279, 280; whether they must prove partnership in actions on bills, 283; proof by one against the estate of the other, 333.

PAYEE, a bill payable to A. or B. is bad, 17; where no name is mentioned as payee, 22; where there is a

blank left for his name, 22, 23; mistake in, 23; where there are two persons, father and son, of same name, 23; of bill payable to A. to use of B., 23; where bill is payable to a fictitious person, 24; where a person is both payee and indorsee, 43; evidence in action by, against acceptor, 278; evidence in action by, against drawer, 287; in action against maker of note, 294.

PAYMENT *in general*; when time of not mentioned in the bill, it is payable on demand, 25; place of, 26; delivery of bill when it amounts to, 95; taking up a bill to prevent proceedings against drawer is not payment, 88; by transfer in banker's books, 99; by forged bills or note, 100; presentment for, 146, *et seq.*; statement of place of payment in declaration, 263; presumptive evidence of payment by acceptor, 293; whether part payment by payee prevents indorsee from recovering the whole sum from drawer, 306; part payment by drawer discharges acceptor *pro tanto*, 308.

Part payment, and indorsement for the rest, 139; by acceptor or indorser no discharge of drawer, 82. 249; excuses the giving of notice, 216; and presentment, 167. 270; where the drawee has only accepted for part, 249; by acceptor admits acceptance, 281.

By whom—in general, 238; till paid by acceptor bill is in general negotiable, 238; unless taken up by drawer, when bill is payable to third person, 238; till paid by maker, note is negotiable, 238; maker liable, though he had given his agent money to pay, and the agent has tendered and become bankrupt with the money in his hands, 239.

By whom—bankrupts, 239.

To whom—in general, 239; to proprietor of bill, 239; to one of several partners, 239; to authorised agent, 239; to trustee, 239; to infant, 239; to husband, 239; production of the bill in general proof of title, 239; where authority to receive payment has been revoked, 239, 240; to attorney, 240; not good to his clerk, 240; nor to his agent, 240; acceptor ought to enquire into authority of agent, 240.

To whom—bankrupts, 240.

To whom—in cases of lost and stolen bills, 240.

To whom—in cases of forgery, 242.

Within what time, 248; before due, 248; on last day of grace, 248; by drawer and indorser, 248; after action brought, 248.

By taking a check from the acceptor, 248.

By appropriation, 248.

What amount, 249.

Of the receipt and getting back the bill, 249.

Supra protest, 250; what remedy the party has, 254.

PENALTIES in Stamp Act, 55 G. 3. c. 184., 28; for uttering notes under 20*s*., 5; under 17 G. 3. c. 30. and 7 G. 4. c. 6., 7; in 7 G. 4. c. 46., 54; note given for penalties under the excise laws valid, 113.
PETITIONING creditor's debt on bills, 319; see *Bankruptcy*.
PLACE of payment, 26; alteration in, 38; presentment at, 147 to 152; statement of in the declaration, 263.
PLEDGEES may transfer bills deposited with them, 126.
POST, notice of dishonour by, 205, 206, 207; letters by, acknowledging the arrival of bills, exempted from stamp, 249; who shall bear the loss, in case of bills sent by the post and lost, 369.
POST-dated bills and notes, 25; checks, bad, 32; may be indorsed before the day on which they bear date, 131.
POSTMASTER not liable, in case of lost or stolen bills, 369.
PRESENTMENT,
For acceptance, in general, 141; when necessary, 141; by agent, 141; where the bill is not addressed, 141; within what time, 142, 143, 144; distinction between bankers' bills at sight and others, 144; whether reasonable time is a question of law or fact, 145; must be within hours of business, 145.
For acceptance, how long a bill should be left with the drawee, 145; *note* 28.
For acceptance, to whom it should be made, 146; *note* 29.
For payment not made until money is called for, 146.
By whom, holder or his agent, 147; in case of death, 146.
To whom, where acceptor has absconded, 147; where a note is made payable at a town generally, 147; where the acceptor, &c. is dead, 147; where the bill has been accepted by an agent, 147.
Where, of a bill accepted generally; wherever the acceptor can be found, 147; not necessary in action against acceptor, 148; at counting-house, dwelling-house, or usual place of abode, 148.
Where, of a bill accepted payable at a banker's or other place only, and not otherwise or elsewhere, 148; statute 1 & 2 G. 4. c. 78., 148; presentment at the clearing house is presentment at the banker's, 149.
Where, of a bill accepted payable at a banker's, &c. since 1 & 2 *Geo.* 4. *c.* 78. *not saying there only, &c.* a general acceptance, 149; acceptor not discharged by neglect to present at bankers, 149.
Where, of a bill drawn payable in London, and accepted (since stat. 1 & 2 *Geo.* 4. *c.* 78.) *payable at a banker's or other place, not saying there only, &c* 149; a general acceptance, 149.

PRESENTMENT—*continued.*
Where, of notes payable at a particular place in the margin, 150; not necessary to present the note at that place, 150.
Where, of notes payable at a particular place in the body of the note, 151; part of the contract and the note must be there presented, 151.
Where, of notes payable at two different places, 152; they may be presented at either, 152.
When, of bills payable after date, 152; month means calendar month, 152; days of grace must be added, 153; presentment on the 2nd day of grace a nullity, 153; of bills received just before due, 153; when the style of the place at which the bill is drawn, and at which it is payable differ, 153; when no date is expressed, 154.
When, of bills payable after sight, 154, *note* 31; when a bill has been accepted for honor, 154.
When, of bills and notes payable on demand, 154; the various decisions, 154 to 158; the present rule as to checks, 158.
When, of bills, &c. becoming due on Sunday, Christmas-day, Good Friday, and Fast-day.
When, within what hours, 159; in the case of bankers, 160; in other cases, 160, 161.
Days of grace. See that title.
Usance. See that title.
When presentment is excused in general, 166; not in case of bankrunktcy or insolvency, 166; bill on wrong stamp, 167; bill held on behalf of the crown, 167; knowledge by the drawer, &c. that the bill is likely to be dishonored, will not excuse, 167; nor order by him to the drawee not to pay, 167.
When excused, by part payment or by subsequent promise to pay, 167.
When excused, by inevitable accident, 169.
In action against acceptor supra protest, 190, 191.
Statement of, in declaration, 268.
Evidence of, 282; of foreign bills payable in England, 292.
PRESUMPTIVE EVIDENCE of existence of bill at particular time, 25; of consideration, 103; of payment by acceptor, 293.
PRINCIPAL. See *Agent.*
PRINCIPAL SUM, recoverable, 306.
PRISONERS, notes given to under Lords' act, 11.
PROCURATION, one partner may indorse bills by procuration for the rest, 45.
PRODUCE, notice to, 275.
PRODUCTION of bill, on writ of inquiry, 273; on trial, 275, when dispensed with, 275.
PROMISE to accept foreign bill, when it amounts to acceptance, 173, 174, 175, 176, 177.

PROMISE, statement of in declaration, 272.
PROMISE, to pay, with knowledge of indulgence having been given, waives the indulgence, 82; what amounts to, 83; when it renders drawee or other person liable, 92; with knowledge of the dishonour waives want of notice, 216; and want of presentment, 167, 270; by acceptor, admits acceptance, 281; and indorsements, 286.
PROMISSORY NOTES. See *Bill of Exchange*, and the various titles.
PROOF of bills and notes in bankruptcy, 321. See *Bankruptcy*.
PROTEST, acceptance *supra protest*, 189; see *Acceptance*; of foreign bills necessary, 212; foreign courts give credit to, 212; if bill lost, may be made on copy, 212; *semble* not necessary to send protest, with notice of dishonor to persons resident here, 212; but protest must be made, 214; within what time, 213; on the last day of grace, 213; whether noting the bill on the day, and protest extended afterwards, sufficient, 213; *note* 60; protest must be made in form before payment *supra protest*, 213; where drawee has no effects, protest not necessary to charge the drawer, 214; subsequent promise excuses protest, 214, 236, 237.
Of inland bills, 214; seems to be in no case necessary, 215.
For better security, 216.
When excused, 236; by promise to pay, 236, 237. 214.
Payment supra protest, 250; by whom, 250; remedy of party who so pays, 251.
Omission of statement of in declaration, subject of special demurrer, 271.
Evidence of, 292.
PRUSSIAN BONDS, payable to order, pass by delivery, 126.

RANSOM NOTES, invalid, 114.
REASONABLE diligence in presenting bills payable at sight, 142; in enquiring for party's residence, 234, 235; in presenting a bill taken when nearly due, 153.
REASONABLE TIME, whether a question of law or fact, 145; in notice of dishonor, 207.
RECEIPT, exemptions in stamp act as to, 249; when receipt on bill does not express who received the money, 293.
RE-EXCHANGE, when drawer answerable for, 73, 313; acceptor not answerable for, 83, 315; and *note*, 60; nature of, 312; proof of in bankruptcy, 342.
REFERENCE to master, 273.
RE-ISSUING bills, stamp, 84; by drawer, 135.
RELEASE, discharge of acceptor by, 84; by holder does not

RELEASE—*continued.*
discharge acceptor where bill comes into hands of indorsee for value without notice, 84; to payee of note does not discharge maker, 77; agreement by one of several drawers to provide for bill, 320.
REMEDY on bills and notes, 252. See *Action, Affidavit, Declaration, Inspection, Staying Proceedings, Judgment by Default*, against postmaster, &c. in case of lost bills, 369.
RENEWED bill, when acceptor is discharged by taking of, 87, 88; renewed bills given instead of illegal bills, when valid, 120, 121.
REPUTED ownership of bills and notes, 347.
RESTRICTIVE indorsements, 138.
ROBBERY. See *Lost and Stolen Bills.*

SATISFACTION, by holder receiving smaller sum from third person, discharges drawer, 73; taking the several notes of one of three drawers, whether a satisfaction, 78; charging a party in execution not a satisfaction, 76; nor entering up judgment against one of the makers of joint and several notes, and levying part under a *fi. fa*, 82; when a bill or note is to be considered as delivered in satisfaction, 95; by one party is satisfaction by the other, 259.
SCOTCH NOTES within the stat. 3 & 4 Ann. c. 9. 4.
SEDUCTION, note given to stay proceedings in action for, valid, 114.
SERVICE of notice of dishonor, 288.
SET OFF in bankruptcy, 343.
SETS of bills, 2; stamp on, *Appendix;* delivery of all the parts on a transfer, 136.
SHORT BILLS, 350.
SIGHT, bills payable at, how stamped, 30; the word *acceptance* held equivalent to sight, 141, 142; bills payable at, when to be presented, 142, 143, 144; distinction between bankers' bills at sight and others, 144; bills payable after when to be presented, 154; days of grace upon, 164; statement of acceptance in declaration, 267.
SMUGGLING consideration, 112.
SPECIAL purpose, party receiving bill for, cannot repudiate such purpose, and sue on the bill himself, 109.
STAMPS, see *Appendix*, No. VI.; instrument not amounting to promissory note, and not requiring stamp, 17, 18; on bankers' bills and notes compounded for, 28; Appendix, No. 5. *note* 6.; to bearer generally a note on demand within 1st class of notes, Schedule, part I. 28; bill to drawer's own order may be re-issued, 28; penalties under stamp act, 28; stamping after the making, 28; foreign bills, 29; bills and notes bearing

STAMPS—*continued.*
interest, 30; the meaning of the words "date" and "sight" in stamp act, 30; order for payment of money out of a fund which may or may not be available, 31; on checks, 32; consequences of want of stamp, 32; stamp not necessary to forgery, 33; unstamped bill or note may be inspected for collateral purposes, 33, 34; different denomination, 33; re-issuing bills, 34; alteration, when it avoids stamp, see *Alteration.*
STRIKING OUT INDORSEMENTS, 285.
STAYING PROCEEDINGS, 272.
STOLEN BILLS; see *Lost and Stolen Bills.*
STYLE, difference in, how calculated, 153; *note* 30.
SUM RECOVERABLE, principal, 306; interest, 309; when due, 309; for what period payable, 310; expenses, 311; re-exchange, 312; damages, 315.
SUNDAY, bill due on, when to be presented, 158; when included in days of grace, 162; notice of dishonor in case of, 211; averment of presentment on, when good, 270.
SUPERSCRIPTION, differing from the body, 25.
SURETY, signing a note after it is issued requires a new stamp, 40; signing a joint and several note discharged by composition with principal, 88; one of several joint sureties not discharged by composition with another, 89; where he cannot be a petitioning creditor, 320; proof by, in bankruptcy, 328, 329.

TENDER of bank notes not good, if objected to, 10; by drawer, within what time, 73; acceptor cannot plead tender after day of payment, 81; good on last day of grace, though there has been a previous demand, 165; of money by agent of acceptor to holder, on condition of bill being delivered up, does not discharge acceptor, 239; accompanied with demand of receipt, bad, unless demand unobjected to, 249; of principal prevents the accruing of interest, 309.
TRAFFICKING in bills makes a man a trader, 317.
TRANSFER, see *Indorsement*; of bill without indorsement, effect of, 95. 203; of account in bankers' books, when it amounts to payment, 99.
TROVER for bill transmitted for a purpose which is repudiated, 93; on the destruction of bill by the drawee, 179; notice to produce not necessary, 275; what interest allowed, 311.
TRUSTEE, transfer of bill by, 126; even after bankruptcy, 127; payment to, 239; may sue on bill, 257.

USANCE, what, 165; courts will not take judicial notice of

USANCE—*continued.*
the extent of, 165; usance of different places, 165; length of must be stated in declaration, 264.
USURY, vitiates consideration of bill, 117; to constitute usury there must be a loan, 117; anticipation of payment not usury, 117; exorbitant brokerage not usury, 117; unless the party discounting the bill stipulates for it, 118; exchange of bills not usury, 118; to constitute usury, money need not be actually advanced, 118.
What amounts to usury—deducting interest in discounting, not usury, 118; giving other bills in discounting without rebate of interest is usury, 119; unless the taking the other bills be a separate transaction, 119; broker taking bills to be discounted and allowing one per cent. to the person discounting, in addition to interest, for the debt of a third person, but accounting with his principal for the whole amount of the bill, *minus* the interest and commission, not usury, 119; giving goods *primâ facie*, usurious, 119; unless the proposal to take goods comes from the party getting the bill discounted, 119.
Receipt of Commission for trouble not usurious, 120; a banker may charge a commission, but exorbitant commission will be deemed usurious, 120; acceptor of accommodation bill taking two and a half commission for renewing it, usury, 120.
Renewed bills, when usurious—subsequent security excluding usurious interest good, 120; *aliter* if it includes any usurious interest, 21.
Between what parties usury will avoid a bill, 121; indorsee for valuable consideration may sue on usurious bill, 122; and even when he claims through usurious indorsement, 122.
UTTERING FORGED BILL, 377.

VALUE RECEIVED, need not be inserted, 27; meaning of the words, 27; effect of alteration in the words, 34; statement of in declaration, 264.
VARIANCES, what amounts to, 275, 276.
VENDOR AND VENDEE; effect of delivery of bill or note by vendee without indorsement, 95, 100, 101; where the bill is lost, 102; bill given for goods sold under a fraud void, 105; bill given for goods of inferior value may be enforced, to full amount, 106; vendor when intitled to interest, 310.
VENUE in actions on bills and notes, 261, 262.
VERBAL ACCEPTANCE, 173; verbal notice, 204.

WAIVER of Acceptor's liability, 84.
WANT of EFFECTS; see *Effects.*

WARRANT OF ATTORNEY, whether the taking one is a giving time, 75.
WIFE; see *Married Woman.*
WITNESSES, competency of, drawer, 299; indorser, 301; acceptor, drawee, or maker, 304; in case of forgery, 379.
WORDING of Bills and Notes, 17.

London:
Printed by Littlewood and Co.
Old Bailey.